Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

Gordon Ray Potts, Jr.,
Petitioner

v.

Pearl Lynell Potts, et al.
and
Connecticut General Life Insurance, et al
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS EASTERN TENNESSEE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the abuse of Tenn. R. Civ. P. 37 violated due process of the accused under the 4th, 5th, 6th, 7th, 8th, and 14th Amendments in a civil case where the Petitioner and a co-defendant were jointly charged with theft of the elderly by the Plaintiff and where the Petitioner was denied a jury trial and the resulting default judgment deprived both jointly accused defendants of over $35,000.00 in property without due process? Does a conflict exist between tort law and criminal law with regard to a defendant's Constitutional rights in both Tenn. R. Civ. P. 37 and Federal Rule Civ P.37 when compared to 18 USC 402 and 18 USC 3691, and if so, under 28 USC, 2072(b), should Rule 37 be amended to limit the power of a judge in imposing excessive penalties and to guarantee the rights of a citizen under the U.S. Constitution regardless of whether the charges are brought in civil or criminal court?

2. Whether there was a conspiracy to deprive the Defendants of due process under 18 U.S.C. § 241 and 242 after the Defendants claimed malicious prosecution by the Plaintiff's attorney, fraud on the part of the Insurance Company's attorney and prejudice of the judge, since these claims were made shortly before the judge released the Insurance Company from all liability on a date two weeks prior to the notified hearing date and thereafter issued a summary judgment in favor of the Plaintiff on a date that the judge told the defendants they need not appear? Since there were at least 3 hearings without the Petitioner because he was not properly notified, and since an Order, with no Motion

preceding it, was signed by the judge allowing the Plaintiff's attorney to dismiss the majority of her claims in a non-suit in the 11th hour, and that same judge gave the Plaintiff protection from discovery and cancelled the jury trial to deny the defendants cross-examination of witnesses and evidence, is this conspiracy if the same judge repeatedly denied due process to the Defendants and threatened the only witness to the actual events when she tried to testify at hearing? Since a single appellate judge struck pleadings from the Record on Appeal before the Appellate panel review, then released a principal party to the appeal based on a fraudulent court order, which was clearly noted by the defendants as being fraudulent, and because both the chancery Court and Appellate Court refused to incorporate the federal pleadings remanded in the case into the trial court file as requested by the defendants is this further conspiracy to violate the defendants' Constitutional rights guaranteed by Amendments V and XIV?

3. Whether the state court violated Amendment XIV in exercising jurisdiction over completely diverse defendants when the alleged crime was committed in Maryland, while the Petitioner/Defendant was in Texas, and the alleged victim was from Tennessee, one Defendant is from Maryland, one from Delaware, and two were from Texas? Was the State Court's conclusion of theft premature and did the District Court judge err by issued a remand to State Court, given the criminal charges in the Complaint and the complete diversity of the Defendants?

4. Whether a fraudulent party should be exempted from sanctions under 47 U.S.C. (1001) when the attorney for Connecticut General Life Insurance Company misrepresented a Federal Court Order and used the fraudulent representation to be released from liability in both chancery and appellate court? Is the Defendant entitled to reversal based on the fraudulent representation of a District Court Order that caused him to be deprived of his property in violation of Constitutional Amendments V and XIV?

5. Whether the summary judgment under Fed. Rul. Civ. Proc 56 should be reversed due to disputed material facts, and lack of adjudication of all pleadings and because of the failure of the Chancery and Appeals court to include the federal pleadings and failure to adjudicate all of the pleadings in the case? Did the Court aid the Plaintiff in abuse of process and deprival of the defendants' Constitutional rights under Amendments VII and XIV by granting summary judgment and canceling the jury trial without hearing the primary witnesses, allowing cross-examination of the Plaintiff's witnesses by the defendants or adjudicating all of the pleadings in the case record?

PARTIES TO PROCEEDINGS BELOW

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PETITION FOR WRIT OF CERTIORARI

Gordon Ray Potts, Jr. petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Tennessee and the Eastern Tennessee Court of Appeals.

Opinions Below

The Supreme Court of Tennessee denied the Petition for Extraordinary Appeal on November 5, 2001. A copy of this denial appears as Appendix A. The Eastern Tennessee Court of Appeals decided the case on August 9, 2001. A copy of this Opinion appears as Appendix B and can be found published online at www.tsc.state.tn.us. 3rd Quarter Appellate Opinions, 2001. It is cited as *2001 Tenn. App. LEXIS 573, *; 59 S.W.3d 167*

Jurisdiction

The date on which the highest state court decided my case was August 9, 2001. A timely petition for rehearing was thereafter denied on November 5, 2001. The jurisdiction of this Court to review the decision of the Tennessee Court of Appeals is invoked under 28 U.S.C. 1257 (a).

Constitutional Provisions

Amendment IV "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and

particularly describing the place to be searched, and the persons or things to be seized."

Amendment V "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment VI "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Amendment VII "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

Amendment VIII "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment XIV Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

This case was initiated subsequent to the death of the Plaintiff's terminally ill husband, Gordon R. Potts, Sr.; father of the individual Defendants in the civil case. The decedent took a trip in June of 1999 to South Padre Island Texas where he met all of his natural children and announced that he was leaving his wife. In the first week of July, 1999, the decedent withdrew money from his bank account and left his wife in Tennessee to live in Maryland with Defendant, Mary Potts Mayforth, a resident of Kensington, Maryland. While in Maryland, between July 6, 1999 and August 15, 2000, Mr. Potts, Sr. conducted several financial transactions of his own volition by mail, by phone and in person. Among these transactions were cash withdrawals, an insurance policy cash-in, a claim on a damaged vehicle, and a change of beneficiary on a life insurance policy with CIGNA, aka, Connecticut General Life Insurance. The decedent transferred some of this money to both Defendants by mailing deposits into his

son's account in South Padre Island, Texas. The check constituting most of the funds sued for by the Plaintiff bore a notation on the back of the check written by the decedent, "EDU", standing for educational funds that he owed his children from a previous divorce settlement. The estranged spouse and Plaintiff, Pearl Lynell Potts, called Defendant Mayforth's home so many times during the decedent's stay in Maryland screaming and threatening Ms. Mayforth and the decedent that Defendant Mayforth filed telephone harassment charges against her in late July. Other harassment at this time by the Plaintiff included issuing change of address orders through the post office that routed Defendant Potts's mail (including his bank statements for the months of July and August 1999) to the Plaintiff. The decedent, Gordon R. Potts Sr., remained in Maryland for approximately 5 weeks from July 6 to August 15, 1999. On August 15, 1999, Mr. Potts Sr. asked his daughter, Mary Mayforth to drive him to Texas to see his two other children before he died. Defendant Potts was in Hawaii at this time and did not see his father from the time that Mr. Potts, Sr. left the Plaintiff in Tennessee on July 6, 1999. Mr. Potts, Sr. died very peacefully in his sleep on the 4th day of the trip with his daughter in a hotel in San Marcos, Texas on August 19, 1999. The day after her husband's death, the Plaintiff began calling and leaving threatening messages on the answering machines of the decedent's two children, Ms. Mayforth and Chip, stating that they had "killed their father" and that she would make them "pay". Tape recordings of these calls were submitted as evidence of harassment and malice in the civil suit. The day after Mr. Potts died, on August 20, 1999, Pearl Lynell Potts retained Kathryn Dugger (Attorney Dugger) to represent her. 12 days later on September 1, 1999, before proper investigation of the facts, Attorney Dugger filed a Complaint (App.I-1,103a) for the Plaintiff jointly accusing

Defendants Potts and Mayforth of elderly abuse and theft by coercion and claimed that the property transferred by the decedent before his death was property of the estate and belonging to the Plaintiff. The case was removed to Federal District Court by Connecticut General Life Insurance (the "Insurance Company"), under ERISA laws. Extensive Discovery was demanded by the Plaintiff, and many of the items demanded and questions asked in the Plaintiff's interrogatories were irrelevant or non-existent. On December 3, 1999 an Agreed Order was produced from the Federal Court to remand to State court and the Order (App.D-1, 24a) was drafted by Reginald Keaton (Attorney Keaton) of Knoxville, TN, representing the Insurance Company. Attorney Keaton's draft of the Order did not match the actual Order given by federal Judge Hull and was later clarified (App.D-2, 25a) by that same Judge to simply read as a remand, not a "settlement agreement" allowing the withdrawal of the Insurance Company and release of liability. Because of the dispute over which party was the legal beneficiary, the Chancery Court Judge, Jean Stanley, bifurcated the issues, sending the insurance beneficiary contest back to District Court. After 5 months of pleadings in District court, the case was remanded to back State Court in its entirety on October 20, 2000. The federal pleadings were not incorporated into the State court trial record. On September 27, 2000, the Plaintiff's attorney filed a Motion for Sanctions (App. I-2, 109a) asking for default judgment against Defendant Potts for perjury, contempt, and theft. Exhibits to this Motion for Sanctions include copies of cancelled checks showing deposits in Defendant Potts's South Padre Bank that attorney Dugger had withheld from the defendants for 11 months. The state court judge issued an Order to Compel (App. H, 100a) and also ordered South Padre Bank to produce Defendant Potts's bank statements. On October 4,

2000, the Attorney for the Defendants filed a Motion to withdraw and set it for hearing the next morning. A hearing was held on October 5, 2000 but the Defendant has no knowledge of what was said at that hearing because he was not notified of the hearing. On October 9, 2000, the Defendants attorney, Tim McConnell withdrew and the Defendants were forced to proceed pro se as they could not find a new attorney that could review the bulky case files and be ready for trial by the scheduled jury trial date. On October 30, 2000, ten days after becoming aware of the court of jurisdiction in which to file following the remand, the Defendants asked for Discovery from the Plaintiff, which was never received. On November 3, 2000 Attorney Keaton, for the insurance company, presented a motion using as proof his fraudulent draft of the District Court's Order, calling it a "settlement agreement" and asked the Court to enforce the Order by allowing Connecticut General to withdraw. A hearing date of November 27, 2000 was set to hear Attorney Keaton's Motion and the Plaintiff's Motion for Summary Judgment. On November 6, 2000, the Plaintiff's attorney filed a motion for protection from discovery (App.I-4, 118a). This motion was never adjudicated, however, the Plaintiff was not required by the Court to produce discovery before the final judgment. On November 13, 2000, a hearing was held on a variety of Motions- the Plaintiff's Motion for Sanctions against Defendant Potts; the Defendants Motion for Sanctions against Attorney Keaton, Attorney Dugger and the Plaintiff; Defendant Potts's Request for a Jury Trial on the Sanctions; and a Request for an Extension of the Jury Trial Date. The Motion of the Insurance Company to withdraw was adjudicated two weeks prematurely in this November 13, 2000 (App.E-2,34a) hearing over the objections of one of the defendants. Defendant Potts was not present in Court and sent a

Request to testify by telephone if his Request for a Jury Trial was not granted. The Chancery Judge dismissed the Contempt charges, but also denied Defendant Potts's jury trial on the Sanctions under the statement that he was "not entitled to a jury trial" (App.G-1, *infra* 54a). The judge found Defendant Potts guilty of perjury and theft and awarded a default judgment to the Plaintiff. Due to a conflict with the scheduling Order, which stated that no Motions could be heard within 5 days of the jury trial, the Judge cancelled the hearings on the 27th (AppG-1, *infra* 57a). No new Notice of Hearing was given afterwards that the hearing on Nov. 27th, 2000 would occur. On November 14, 2000 Attorney Dugger introduced a Motion to reconsider re-setting the hearing on November 27, 2000. On November 20, 2000, another hearing occurred, according to the Appellate Opinion (App. B, *infra* 5a). The Petitioner has no knowledge of what was heard that day, as he was unaware that another hearing was held until the appellate Opinion issued. On November 22, the Plaintiff's attorney mailed to the defendants a signed copy of an Order (App.F, 50a) she drafted nonsuiting most of the claims in her Complaint. No motion preceded the Order and no Notice of Hearing was sent. On November 27, 2000, the Judge granted the Plaintiff's Motion to reset the date of the 27th for hearing, gave the insurance proceeds to the Plaintiff, awarded summary judgment to the Plaintiff, and canceled the jury trial (*See* App. E-1, 29a). The Defendants/Appellants were not at this hearing, as they were not issued a notice that the hearing had been rescheduled.

The Defendants filed a Notice of Appeal on December 8, 2000 and submitted a Brief (App.J-2, 148a) on January 12, 2001 to the Appeals Court of Eastern Tennessee in Knoxville. In April, the Plaintiff's Attorney filed for a

Motion to strike pleadings (App.C-5, 18a) from the record based on the premise that Defendant Mayforth was acting as Defendant Potts's attorney. The Record was received from the Chancery Court on April 30, 2001 and on May 3, 2001, Judge Swiney of the Appellate Court struck pleadings from the Record on Appeal (App. C-4,16a). On May 15, 2001, the Appellants/Defendants filed a Motion to Clarify and Allow Evidence, which was denied. On May 21, 2001, instead of filing a brief, Attorney Keaton submitted a motion (App.C-3, 13a) to the Appeals Court with the fraudulent federal Order attached asking for the Court to declare that Connecticut General was not a party to the Appeal. That motion was granted (App.C-2, 12a) on June 1, 2001 by Judge Michael Swiney and Connecticut General withdrew without filing a Brief. The Appellants asked Judge Swiney to reconsider, noting the fraudulent Order proffered by Attorney Keaton, and this motion was overruled on September 18, 2001, five weeks after the Opinion had been issued. On May 25, 2001, the Plaintiff/Appellee's Brief was filed. On June 4, 2001, the Appellants filed their response to the Appellee's Brief. The Appellate Court's Opinion was issued on August 9, 2001.

On September 7, 2001, the Appellants petitioned the Tennessee Supreme Court for an extraordinary appeal under Tenn. R. Appel. Proc. 10 (App.J-1, 130a). This Petition was denied on November 5, 2001.

Where Constitutional and Federal Issues were Raised:

Several pleadings in the case set forth the federal questions raised, as the case was both in federal and state court for several months. The federal pleadings and federal laws therein were omitted from the official Record used by the

state judges, so the extent of the federal questions actually brought before the state Court was limited to the fraud allegations against Connecticut General, the legality of the state court's bifurcation of the case, and violation of the defendants/appellants Constitutional rights. Federal law and due process are noted in the Issues on Appeal in the Appellants' Brief: Due Process, (App.J-2, *infra* 156a,); Fed R. Civ. P. 56, (App.J-2, *infra* 184a-185a (quoting Justice Rehnquist)); US Constitutional Amendment 9 (App.J-2, *infra* 182a, 205a, 209a); U.S. Constitutional Amendment 7 (App. J-2, *infra* 207a). In the Application for Permission for Extraordinary Appeal: federal jurisdiction, (App J-1, *infra* 131a, 141a, 146). In the chancery court: federal jurisdiction was raised in the Chancery Court in the Nov 13, 2000 hearing (App.G-3, *infra* 67a) and in the Defendants' Motion for Sanctions (App.K-2, *infra* 236a); Amendment 9 and Fed. R. Civ. P. 56 were brought before the chancery court in the defendant's response to Connecticut General's Motion to Enforce Settlement agreement filed in November, 2000.

REASONS FOR GRANTING THE WRIT

1. Disparity of the Tennessee Rules of Civil Procedure and Constitutional Rights

There is a disparity between the Constitutional rights of a citizen in a civil suit and the Constitutional rights of a citizen in a criminal proceeding. The difference in the power given to the judge in Tenn. R. Civ. P. 37 and Fed R. Civ. P. 37, in contrast to 18 U.S.C. § 401, 402 is a "loophole" that allowed a corrupt party to deprive the defendant of due process and violate Amendments 4,5,6,7,8, and 14. Because the civil suit charged the defendant with criminal actions, Criminal Procedure dictates that the accused have the right to a lawyer, a jury

trial, to present a defense and to cross-examine witnesses. Tenn. R. Civ. P. 37.02 and Fed R. Civ. P. 37 empower the judge to deprive a defendant of the right to a defense, to a jury trial, and to issue a default judgment in extreme cases of contempt of an order to compel discovery. The penalties for contempt are less severe under the criminal rules. Under 18 U.S.C. § 402, the maximum fine for contempt is $1,000.00. The Defendant in this case was fined in excess of $35,000.00 (App.G-1 *infra* 53a, last line). Prior to the default judgment in this case, the Defendant had submitted a Motion for Sanctions (App.K-2 *infra* 234a), claiming malicious prosecution. This pleading also contained a detailed rebuttal by the Defendant of the Plaintiff's charges in the Motion for Contempt (App.I-3 *infra* 115a) and Motion for Sanctions (App.I-2 *infra* 109a) that brought on the default judgment. By using the Rule 37 "loophole", the Chancellor conspired with the Plaintiff's attorney to deprive the Defendants of their property and a defense without due process. It was the intent of Attorney Dugger that the case never go before a jury after she discovered that her client had fabricated most of the charges in her Complaint (App.I-1 *infra* 103a) and was accused of malicious prosecution. At the hearing, the Chancellor dismissed the Motion for Contempt (App.G-2 *infra* 59a), but still invoked Rule 37 when denying the defendant a jury trial and issuing a default judgment (App.G-1 *infra* 56a, line 21). The transcript of this hearing (App.G-3, *infra* 61a) shows that Chancellor G. Richard Johnson abused, intimidated, threatened and berated the defense's primary witness and co-defendant in open court during the hearing on November 13, 2000 (App. G-3 *infra* 65a, line 9; 73a, line 17; 80a, lines 3-15), and violated the constitutional right to a fair trial by not allowing a defense (App.G-3 *infra* 88a, line 3-15). Chancellor Johnson also accuses Defendant Potts of obstructing justice and perjury, and

states that Defendant Potts offers no defense in the record (App.G-3 *infra* 89a). This is clearly controverted in the Defendants' Motion for Sanctions (App.K-2 *infra* 234a) that the judge claims to have read before dismissing it that day. Moreover, throughout the transcripts of Nov 13, 2000 (App.G-3 *infra* 61a) and November 27, 2000 (App.E-3 *infra* 37a), the judge seems to know the Plaintiff's case intimately and appears not to have no knowledge of the content of the pleadings submitted by the Defendants before passing judgment. Because the Plaintiff's attorney asks the judge to deny a defense to Defendant Potts, and the judge denies a defense under Tenn. Rul. Civ. P. 37 when the judgment meted out was for sanctions and not for failure to compel, then threatens the jointly accused party and only witness to the actions of the decedent when she tries to testify, a conspiracy between the Judge and the Plaintiff's lawyer to deprive under 18 U.S.C. § 241,242 exists. The Petitioner poses this analogy: A gun can be used by a soldier to defend our country, or the same type of gun may be used by a criminal to commit a crime. Likewise, corrupt parties will use the law as a tool for misconduct, rather than using the law to administer justice. In this case, the corrupt parties used Rule 37 to claim that the Defendant offered no defense and then gain default judgment under Tenn R. Civ. P. 55, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, judgment by default may be entered." The Appellate Court Opinion (App.B *infra* 2a) affirmed this judgment, stating that the Defendant offered no defense. This is not true, as the Defendant had given a defense in his Motion for Sanctions (App.K-2 *infra* 234a) and asked for a jury trial. Moreover, the defendants were expecting a jury trial to occur on November 29, 2000, and were anticipating that

cross-examination of the Plaintiff and her witnesses would bear forth the truth. The judge canceled this jury trial to further assure that no defense could be offered. The word "may" in TRCP 55 affords a great deal of latitude to the judge, as does Rule 37 in relying on "discretion". The Petitioner respectfully asks the Supreme Court to review these Rules of Civil Procedure as to the constitutionality of allowing a judge of any court to prevent a defendant from giving any defense when charged with theft.

2. Abuse of Process

The Plaintiff used the case *Shadrahar v. Global Housing*, 983 S.W.2d 230, Tenn 1998, in her Motion for Sanctions (App.I-2 *infra* 109a) as justification for default judgment, but the court erred when granting the default judgment after denying a jury trial and a defense to the Defendant under Rule 37 because the Motion for Contempt had been dismissed (App.G-2 *infra* 59a). Moerover, *Shadrahar v. Global Housing* is not a good justification because it concerns a defendant who refused to produce any discovery at all for 17 months and disobeyed several court orders to compel. In this case, the Plaintiff asked for items from the Defendant that she knew that he could not readily produce because the Plaintiff had diverted the Defendants mail and the Plaintiff had the original documents. The discovery of the Defendant's credit card receipts was moot, as he had no credit cards. The discovery of the bank statements was also moot, as the Plaintiff had cancellation stamps on the back of the checks showing where the money was deposited and withheld this information from the Defense for 11 months. Defendant Potts admitted in his Responses to Interrogatories that he had received money from the deceased, but could not give the correct amount by the time that discovery was due because the Plaintiff had diverted his mail at the time the bank statements were mailed. The

fact that the deceased himself withdrew and transferred some of these monies to the Defendant was not proof of theft, because the Plaintiff claimed in her Complaint (App.I-1 *infra* 103a) that the method of theft was coercion of an incompetent elderly person, and incompetence was never proved. Coercion also was never proved because Defendant Potts was 2,000 miles away from the "victim" when the alleged crime occurred, and the deceased withdrew the bulk of the monies while still living with the Plaintiff.

3. Due Process was Denied Because the Case was not Fully Adjudicated at Trial and the Appellate Court was Non-responsive to the Issues on Appeal

The Defendants' Counter-Claim (App. K-4, 245a) was never adjudicated. The remanded federal court documents were never incorporated into the Record. The Appellate Court upheld the Chancellor's default judgment under Tenn. Rule 37.02, as stated in the *Opinion* (App. B *infra* 8a). In the Appellant's Brief, the Petitioner referred to malicious prosecution and abuse of process by the other parties involved, but the Appeals Court did not comment on these issues in the *Opinion*. The Appellate court was unresponsive to most of the Issues on Appeal submitted by the Appellants (*See* App. J-2, *infra* 154-158a). The laws and cases referred to in the Appellants Brief as supporting documentation were:

Statutes used in the Defense:

Fed R. Civ P. 11- malicious prosecution

TCA 20-6-403, which says that when there are several defendants, the verdicts and judgments, whether the pleadings by them are joint or several, shall be molded, according to the facts, and to meet the exigencies of the case;

TCA 20-11-103 and TRCP Rule 41-default judgment was a defective verdict and was objected to before the judgment was entered as per (above), which states that the Court shall reserve ruling until all parties alleging fault against any other party have presented their proof-in-chief;

TCA 21-1-103, which states that either party to a suit in chancery is entitled, upon application, to a jury to try and determine any material fact in dispute;

TCA 25-3-135, which states that such other persons be made liable with the person accused of being in default, as may be in existence at the time of the motion;

TCA 29-2-101, which states that no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person;

TCA 29-6-161 "Nonresident setting aside default judgment";

TRCP 12.02 as failure to state a complaint upon which relief can be granted;

TRCP 38, TRCP 43.01, TCS 21-1-103 and US Constitutional Amendment 9 "Defendants/Appellants were prejudiced by having their civil rights violated in not being allowed a defense in accordance with (above) and in being denied jury trials on the issues."

TRCP 55. Appellants were not served with a written notice of application for judgment thirty days before the hearing;

U.S. Constitutional Amendment 7- right to trial by jury in civil suits exceeding 20 dollars.

Cases used in the Defense:

Al-Haddad v. Ritter, 1997 WL 44389 (Tenn.App. 1997)

Alside vs Smith Heritage C/A NO. 03A01-9702-CH-00069,1997 Tennessee Court of Appeals, Knoxville

Andrews v. Bible, 812 S.W.2d 284 (Tenn. 1991) - interpretation of Fed Rul Civ Proc 11 sanctions for malicious prosecution

Brooks v. United Uniform Co., 682 S.W.2d 913, 915 (Tenn. 1984)

Chemiakin v. Yefimov, 932 F.2d 124, 130 (2d Cir. 1991) Federal Rul Civ Proc 37 and Tenn Rul Civ Proc 37 need to be amended to protect the Constitutonal rights of victims of malicious prosecution and abuse of process.

City of East St. Louis v. Circuit Court for the Twentieth Judicial Circuit, 986 F.2d 1142, 1143 (7th Cir. 1993)- duty of a lawyer to the justice system outweighs lawyers obligation to client

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542, 105 S. Ct. 1487, 1493, 84 L. Ed. 2d 494, 503 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656, 94 L. Ed. 865, 873 (1950))- "[a]n essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'"

Con-Tech, Inc. v. Sparks, 798 S.W.2d 250, 253 (Tenn. Ct. App. 1990).- sanctions for lawyers who file malicious suits

Didie v. Howes, 988 F.2d 1097, 1105 n. 8 (11th Cir. 1993)- An evidentiary hearing is necessary in sanction cases where there are disputed facts or issues of credibility.

Fenn vs Highland Credit Bureau, 01-A-01-9503-CV-00100 Tennessee Court of Appeals, Nashville, 1995 – abuse of discretion by the judge and rule 11 sanctions

Gay v. City of Somerville, 878 S.W.2d 124, 129 (Tenn. Ct. App. 1994)- due process

Pittman v. UpJohn Company 890 S.W.2d 425 (Tenn. 1994)- All reasonable inferences from the evidence must be drawn in favor of the nonmoving party

Priest v Union Agency, 174 Tenn. at 306 and 307, 125 S.W.2d at 143- malicious prosecution and 304, 306, 125 S.W.2d 142, 143(1939)- abuse of process

Roberts v. Federal Express Corporation, 842 S.W.2d 246-249 (Tenn. 1992) – malicious prosecution

Vekris v. Peoples Express Airline, 707 F.Supp. 679, 682 (S.D.N.Y. 1988)

4. Conspiracy under Color of Law

(a) The Defendant was convicted of the criminal charge of theft by coercion and of perjury and was fined in excess of $36,652.88 in a hearing on November 13, 2000. The Defendant was not present at the hearing, but had been present at the previous hearing on October 9, 2000, the original date set for hearing the Plaintiff's Motion for Sanctions (App. I-2, 109a). The Plaintiff submitted 6 pleadings for hearing in November rather than wait for the jury trial on November 29, 2000, with the expectation that Defendant Potts would not be able to appear due to travel expense and loss of work. Four of the Plaintiff's pleadings were filed after the withdrawal of the Defendants' attorney on October 9, 2000, and there was no proper notice given for the dates of November 20, 22, and 27th. The Defendant submitted a personally signed Request for a Jury Trial (App.K-1, 232a) that was denied. The co-defendant, Mary Mayforth, requested evidentiary hearings and stated co-ownership in the property being taken from Defendant Potts and was jointly accused of the theft of this property at the time of adjudication but was prevented by Attorney Dugger and Chancellor Johnson from testifying (*See* App. G-3, *infra* 92a- Ms. Dugger: "these are the amounts I've sued for against Mr. Potts and Ms. Mayforth"; 95a- Ms.

Mayforth: "It was partially my money.."; 76a- Ms. Mayforth: "...an evidentiary hearing tried before a jury..."). In reading the transcript (App. G-3, 61a), the hearing is a nearly exclusive dialogue between Chancellor Johnson and Attorney Dugger in which Ms. Mayforth is threatened when she tries to speak. The Chancellor, Attorney Keaton and Attorney Dugger did not follow the course of normal due process, and the judge seems to have discussed the case outside the courtroom, as he held hearings and signed Orders on dates when the Defendants were not prior notified and has extensive knowledge of the Plaintiff's case without awareness of what is contained in the record (*See* App. G-3, *infra* 74a, and 78a vs. 89a and App. E-3, *infra* 41a). There are three pages noted in the Appellants' Brief listing the judges errors (*See* App. J-2, *infra* 178-182). The judge also admits that the file is very large, but denies the extension for trial, claiming that 30 days is enough time for the defendants to hire another attorney, when it is not time enough to even review the files.

From: *Fuentes v Shevin*, 407 U.S. 67

> "For more than a century, the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified." *Baldwin v. Hale*, 1 Wall. 223, 233. *See Windsor v. McVeigh*, 93 U.S. 274; *Hovey v. Elliott*, 167 U.S. 409; *Grannis v. Ordean*, 234 U.S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552."

Generally, procedural due process requires an opportunity for a meaningful hearing prior to the deprivation of a significant property interest. *Parratt v. Taylor*, 451 U.S. 527, 540, 101 S. Ct. 1908, 1915, 68 L. Ed. 2d 420 (1981). The property of both Defendants Potts and Mayforth was deprived in the default judgment given by the Chancellor on November 13, 2000.

(b) The Defendant's *Miranda* rights were violated because the judge did not inform him of his right to counsel pursuant to Fed R. Crim. P. 11(c)(2). The Fifth Amendment prohibits the judge from compelling Defendant Potts's bank statements as it is equivalent to compelling the defendant to bear witness against himself. See *Boyd vs. the United States*, 116 U.S. 616 ,1886:

> "Now it is elementary knowledge, that one cardinal rule of the court of chancery is never to decree a discovery which might tend to convict the party of a crime, or to forfeit his property. And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom. + Note by the Court. -- See Pollock on Production of Documents, 27; 77 Law. Lib 12[8]."

(c) The Appellate *Opinion* (App.B *infra* 8a) responds to the Appellants question:

"Did the Trial Court abuse its discretion in entering a Default Judgment against Defendant Gordon R. Potts, Jr. as

a sanction in accordance with Tennessee Rule of Civil Procedure 37.02?"
The Appellate response:
" Upon review of this extensive record, it is apparent that Defendant Potts' conduct in the case was uncooperative at best.... the Court further found that the uncontradicted evidence establishes that Potts has committed perjury, has lied under oath, in his interrogatories about these various checks" (App.B *infra* 8a). The Appellate court could not have reviewed the entire record because they failed to acknowledge that the Contempt charge had been dismissed and they also failed to note that the Defendant had filed a Motion for Sanctions (Appendix K-2, 234a) on October 9, 2000 that contained a lengthy defense. Failure to address the items in an Appeal and to properly examine the Record is denial of due process to the Appellant.

(d) The Defendant was denied the right to Discovery from the Plaintiff, as the Chancellor protected the Plaintiff from producing Discovery in response to a Motion for Protection filed by Attorney Dugger (App. I-4, 118a).

(e) The Chancellor cancelled the scheduled jury trial in a summary judgment hearing on November 27 after telling the Defendants (App.G-1, *infra* 57a) that there would be no hearing on November 27. The hearing proceeded with no new Notice of Hearing issued, so the Defendants were not duly notified of the hearing in which the Chancellor granted the Plaintiff's Motion for Summary Judgment (App. I-5, 122a). These actions by the Chancellor indicate that he conspired with Attorney Dugger to prevent the defendants from having a jury trial. This enabled the maliciously filed Complaint (App.I-1, 103a) and the Plaintiff herself to be exempted from cross-examination.

The conditions of summary judgment are laid out in Tenn. Rul. Civ. Proc. 56, which parallels the Federal Rule:

> "56.03 Motion and Proceedings Thereon. The motion shall be served at least thirty (30) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Summary judgment is proper if the evidence "'show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to [a] judgment as a matter of law.'" See Fed. R. Civ. P. 56(c); *Canderm Pharmacal, Ltd. v. Elder Pharmaceuticals, Inc.*, 862 F.2d 597, 601 (6th Cir. 1988). There were many disputed issues of material fact that were unresolved at the time of summary judgment. Among them: Did the deceased show substantial compliance with the change of beneficiary form? What was the decedent's competency and intent when he changed the beneficiaries shortly before his death? Was the Plaintiff's Complaint malicious prosecution? What was the liability of Connecticut General to the Defendants for negligently processing the change of beneficiary form?

The Chancellor's role in denial of due process to the Defendants was to assist Attorney Dugger in "cleaning up"

the items in the Complaint by the hearing on November 27, 2000 (*See* App. E-3, 37a) by:

1) Excusing the Plaintiff from Discovery at the request of the Plaintiff's attorney (App. I-4, 118a)
2) Signing an Order (App.F, 50a) prepared by Attorney Dugger non-suiting the remainder of the Complaint without any hearing or preceding Motion,
3) Holding hearings on three occasions (Oct. 5, Nov. 22, and Nov 27) without proper Notice to the Defendants,
4) Adjudicating the matter of who was the rightful beneficiary when there were issues of material fact at dispute (App.E-1, *infra*, 31a,)
5) Releasing the party Connecticut General (App. E-2, 34a) without incorporating the Federal pleadings or consideration of the fraud accusations in both federal and state court against Connecticut General.
6) Violating the provisions of Fed. Rul. Civ. Proc. 56 for hearing Summary Judgement by not ordering further evidentiary hearings on the material facts in dispute.
7) Canceling a jury trial in violation of U.S. Const. Amendment 7.

(f) The Defendant is entitled to a reversal of the decision on the insurance beneficiary contest and Connecticut General should be held responsible for payment to the defendants of the full amount of the policy due to fraud and negligence. The Defendants' attorney, Tim McConnell, filed a Motion to Amend Answer and Counter-claim (App. K-4, 245a) pleading in Chancery Court on April 10, 2000, asking for a declaratory judgment pursuant to Tenn. Code Ann. §§ 29-14-101 and payment of the full amount of the insurance proceeds. This pleading was not adjudicated. Furthermore, the issue of Attorney Keaton repeatedly presenting the Order he drafted incorrectly needs to be resolved. The Appellate Court did not address this issue,

though it is included in the Appellants' Brief (App. J-2, *infra* 157a). Further fraud was committed by Attorney Keaton when he filed a Motion to the appellate court an Order Declaring that Connecticut General is not a Party to the Appeal (App. C-3, 13a). In Attorney Keaton's Motion, he incorrectly claims that the Insurance Company is not included in the issues contained in the Notice of Appeal and presents the fraudulent Federal Court Order again. Would the honorable Justices of the Supreme Court be kind enough to clarify if a reversal is justified or a new trial is in order under 29 U.S.C.A. § 1132 ? In the case of *Woodmen of the World Life Insurance v. J. Hymel* (610 So.2d 195) , the named new beneficiary had a cause of action against the insurer for the insurer's negligence in executing a change in beneficiary. As to Fraud, see *Haynes v. Cumberland Builders, Inc.*, 546 S.W.2d 228, 232, where the basis of establishing a claim for fraudulent misrepresentation is that the party asserting fraud must rely on that misrepresentation and be caused harm by it. This case meets these qualifications.

(g) The Appellate Court enabled the violations of due process by Chancellor Johnson to go unchecked by failing to address the misconduct issues in the Appellants' Brief (App. J-2 *infra* 154-158a). Judge Swiney of the Appeals Court joined the conspiracy by striking the Defendants pleadings from the record after they had been adjudicated in the lower court. Judge Swiney assisted in denying due process by:

1) Issuing an Order (App.C-4, 16a) striking pleadings while neglecting to properly review the Record, as evidenced by the statement in the Opinion that there was "uncontradicted evidence" presented by the Plaintiff of theft and perjury. This is flatly contradicted in detail in Defendant Potts' personally signed and

delivered Motion for Sanctions (App. I-2, 109a). This contradicts Judge Swiney's "thorough" review of the Record before issuing his Order striking the Defendants' pleadings; and,

2) Judge Swiney issued an Order (App.C-2, 12a) declaring that Connecticut General was not a party to the Appeal. Again, Judge Swiney could not have reviewed the record because it contained several pleadings alleging fraud on the part of Connecticut General, and both the original fraudulent version of the District Court's Order (App. D-1, 24a) prepared by Attorney Keaton and a clarification of the District Court Order (App. D-2, 25a), showing that the District Court's Order did not allow Connecticut General to withdraw or purport any "settlement agreement".
3) After issuing the Order, Judge Swiney received a Motion to Reconsider from the Appellants/Defendants enclosing copies of the fraudulent Order and the corrected Order from the Federal Court. Even if he had overlooked them in the record, the two versions were well before him at this point. His solution to this dilemma was to postpone overruling the Defendants Motion to Reconsider (App.C-1, 11a) until after the briefs had been filed and the panel had reviewed the case. Connecticut General never filed a brief.
4) The Appellant's brief specifically asked the lower Court and Appellate Court to include the federal pleadings. This was never done.

Both Courts erred in asserting that the sanctions against Defendant Potts were for Contempt for failure to obey an Order to Compel. The Motion for Contempt was dismissed (App. G-2, 59a) because the Order to Compel had been satisfied. Although Judge Swiney claims to have reviewed the extensive Record before striking pleadings (as quoted

above in (b), it is improbable that he had time to review the Record sufficiently since he received the voluminous Record on April 30, 2001 and issued the Order on May 3, 2001. The actions of Appellate Judge Swiney in striking pleadings and dismissing parties from the Appeal before review shows prejudice against the pro se litigants and deprives the right of the Defendants to a fair trial under 18 U.S.C § 241, 242 because it was done at the request of the opposing parties after the judgment had issued from the lower court. Appellate Judge Swiney struck the Defendants Motion for Sanctions (App. K-2, 234a) from the Record on Appeal by issuing an Order (Appendix C-4, 16a), but this was in err for three reasons: 1) because the defendants' Motion for Sanctions was personally signed and presented to the court by Defendant Potts's on October 9, 2000, therefore misrepresentation was not an issue, as the pro se litigant was present in court on that date; 2) Judge Swiney did not first read the Defendants Motion before striking it, or he would have seen Defendant Potts' defense of the charges in the Plaintiff's Motion for Sanctions; and 3) It is unreasonable burden to expect defendants that have been deprived of counsel in the final weeks of a trial to complete all of the pleadings with perfection, and errors in preparation should not be cause for striking the Defendants' pleadings from the Record, especially given that the Plaintiff's attorney consistently drafted Orders signed by the Chancellor with no date of signature.

The Plaintiff's Attorney asked for so many pleadings to be stricken from the Record (*See* App. C-5, 18a) that her request becomes ridiculous, given that she did not object to these items in her responsive pleadings filed in Chancery. It is a sad commentary on the justice system when the proof or non-proof of the Plaintiff's accusations in her Complaint became a sideline issue to procedural matters. Rule 37(b)

provides for the denial of a defense only upon failure to abide by an Order to Compel Discovery, and as the Order to Compel was obeyed, it becomes evident that Attorney Dugger was proceeding with malice, obstructing justice and attempting to deprive the Defendants of due process, and that Chancellor G. Richard Johnson was aiding her by preventing co-defendant and prime witness Mary Mayforth from testifying by threat of imprisonment (*See* App. G-3, 61a- throughout). The cancellation of the jury trial scheduled for November 29-30, 2000 destroyed any possibility for the Defendants to have a fair trial. The Defendants intended to prove at trial through cross-examination that the Plaintiff's accusations were malicious and untrue, and show the jury that the Plaintiff had a history of mental illness consistent with the delusional accusations she made against the Defendants. They were not given the opportunity to cross-examine the Plaintiff or any other witnesses because Chancellor Johnson canceled the jury trial to aid Attorney Dugger in keeping her client off the witness stand. The reason that Conspiracy is alleged to have occurred is that the Chancellor knew these acts were improper, yet he denied due process to the Defendant at the request of the Plaintiff's Attorney and the Insurance Company's attorney, and it had a negative outcome on the Defendants case.

(h) There is also the fact that Defendant Mayforth was nonsuited on the Plaintiff's Complaint only after the Court had deprived her of her property in the default judgment issued November 13. The fact that Defendant Mayforth was accused of the exact same crimes jointly with Defendant Potts and was nonsuited shows that Attorney Dugger was relying on the "shotgun approach" as characterized in TRCP Rule 11:

> "It must be demonstrated, as the basis of pre-filing investigation and research, that there is a REASONABLE BASIS to name each defendant named, and to support each claim asserted. The shotgun complaint or answer, filed in the hope that discovery will produce the justification for it, is improper."

5. State Court was not the proper jurisdiction:

As to the case being remanded back to the State Court by the District Court, the complete diversity of the Defendants and the ERISA issues should have been heard in a Federal Court. Diversity jurisdiction requires complete diversity- each defendant must be a citizen of a different state than plaintiff. (*Harris v. Illinois-California Express, Inc.*, 687 F.2d 1361, 1366 (10th Cir. 1982) (quoting Owen Equip. and Erection Co. v. Kroger, 437 U.S. 365, 57 L. Ed. 2d 274, 98 S. Ct. 2396 (1978)). Because the Plaintiff was a resident of Tennessee and the Defendants were all residents of separate states, the case should have been heard in District Court and the Order (App. D-2) to remand to State court was in err.

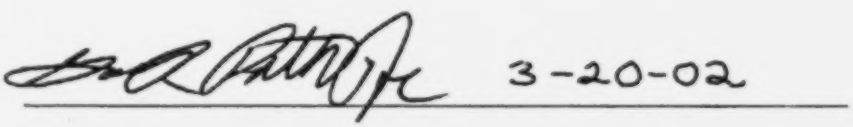
6. Failure to Include Federal Pleadings

After a remand from District Court, the Federal pleadings were never incorporated into the State case file, so federal pleadings that represented 11 months of the 14 month case were never seen by the Chancery or Appellate Court judges. The defendant made note of this in the Appellants' Brief (App. J-2, *infra* 158a). Another issue brought forth by the Defendant in Chancery and on Appeal was that pursuant to Tenn Code Annot. 28-1-115, the Defendants should have been allowed up to one year after the remand to re-file the issues from the federal court into the state court.

CONCLUSION

The Petitioner believes that the laws should be written with the protection of the average citizen as it's foremost concern, and the law should not place such a terrible technical burden upon a pro se defendant as to hinder justice. The Petitioner respectfully asks the Court from protection under the U.S. Constitution from violation of his rights to due process practiced under the guise of executing the law. For the reasons stated herein, the petition for writ of certiorari should be granted.

Respectfully Submitted,



3-20-02

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Date

APPENDIX A

IN THE SUPREME COURT OF TENNESSEE

PEARL LYNELL POTTS. ET AL. V. MARY POTTS MAYFORTH, ET AL.

Chancery Court for Carter County
No. 124432

FILED
01 NOV-5 AM 10:07
APPELLATE COURT
CLERK KNOXVILLE

No. E2000-03116-SC-S10-CV

ORDER

Upon consideration of the Rule 10 application for extraordinary appeal of mary Mayforth and Gordon Potts and the record before us, the application is denied.

PER CURIAM

APPENDIX B

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Submitted on Briefs June 26, 2001
PEARL LYNELL POTTS, Individually And Executor of the Estate of Gordon Ray Potts, Sr., Deceased,
v.
MARY POTTS MAYFORTH and GORDON RAY POTTS, JR., and CONNECTICUT GENERAL LIFE INSURANCE COMPANY
v.
ALICE ELIZABETH NELSON

Direct Appeal from the Chancery Court for Carter County
No. 24432 Hon. G. Richard Johnson, Chancellor
FILED AUGUST 9, 2001
No. E2000-03116-COA-R3-CV

The Trial Court entered a Default Judgment against Potts pursuant to Tenn. R. Civ. P. 37.02 and then summary judgment for plaintiffs. On appeal by defendants, we affirm the Judgment of the Trial Court.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed.

HERSCHEL PICKENS FRANKS, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Mary E. Potts Mayforth, Kensington, MD., pro se.

Gordon R. Potts, Jr., Forsythe, MO., pro se.

Kathryn J. Dugger-Edwards, Elizabethton, TN., for Appellee, Pearl Lynell Potts.

Reginald E. Keaton, Knoxville, TN., for Appellee, Connecticut General Life Insurance.

OPINION

The appellants, Mary Potts Mayforth and Gordon R. Potts, Jr., have raised myriad issues on appeal, most of which are without merit on their face or were not raised below. We conclude the following issues are properly before this Court:

-2-

1.. Did the Trial Court err in denying and dismissing Defendants Potts' and Mayforth's Motion for Sanctions?

2. Did the Trial Court abuse its discretion in entering a Default Judgment against Defendant Gordon R. Potts, Jr. as a sanction in accordance with Tennessee Rule of Civil Procedure 37.02?

3. Did the Trial Court properly grant Plaintiff's Motion for Summary Judgment?

4. Did the Trial Court properly tax court costs to the Defendants Potts and Mayforth?

By way of background, the Plaintiff/Executor for the Estate of Gordon R. Potts Sr., filed this action against Gordon Potts, Jr., and Mary Potts Mayforth and Cigna Group Universal Life Insurance Company, alleging that the deceased did not have the mental capacity to make a change of his beneficiary in his life insurance policy, and that by fraud, duress or undue influence, defendants had caused the deceased to withdraw money from his account and give to them. The Defendant Insurance Company removed the case to Federal Court, and when the Federal Judge directed the parties to brief the issue of jurisdiction, the parties agreed to send the case back to State Court. This was accomplished by an Agreed Order remanding the case to the Tennessee Chancery Court. During discovery, plaintiff learned that the request for change in

beneficiary form had not been signed by the deceased, and Plaintiff then filed a Motion for Summary Judgment as to her claim for the insurance proceeds under the policy. The Insurance Company then

filed a Motion for an Order enforcing a Settlement Agreement and Allowing the Deposit of Insurance Proceeds

and a Discharge from Liability. The Motion was based on an agreed order which had been entered in federal court, remanding the case to the state court, which stated:
. . . the parties having further agreed that once the case is remanded to state court the defendant, Connecticut General Life Insurance Company, shall be allowed to deposit the insurance proceeds with the Court and will then be allowed to be dismissed from the lawsuit.
The defendants objected to the Motion on the grounds that they were unaware that the Change of Beneficiary form was unsigned at the time the Federal Court's Order was entered. In response, the Court determined that because the issue was whether the consent order entered in the United States District Court should be enforced or overturned, all claims pertaining to the life insurance policy issued by the Insurance Company should be bifurcated from the remaining issues and should be removed back to the United States District Court. The United States District Court entered an Order on the insurance matter, stating that
it had not approved any purported settlement which the agreed Order specifically stated was to occur -3-
"once the case is remanded to state court." The USDC further found that there had been no compliance with Title 28 § 1446 which provides the proper procedure for removal. Accordingly,
the Court found that it had no jurisdiction to enforce the purported settlement and again remanded the case to State Court.
Plaintiff filed a Motion for Sanctions against Defendant Gordon Potts, Jr., pursuant to Tennessee Rule of Civil Procedure 37.02, alleging that Potts had repeatedly failed to comply with
discovery requests and had lied in answering interrogatories regarding questions about his father's money. Potts filed a request for a jury trial on the Motion for Sanctions, and he and Mayforth

filed a request for a jury trial on their motion for sanctions against the plaintiff, her attorney and their former attorney. The Insurance Company filed another motion for enforcement of the settlement agreement, requesting that the court allow it deposit the insurance proceeds with the court and be discharged from liability.

The Trial Court then conducted a hearing on the numerous motions before it, and granted the Insurance Company's motion to enforce the settlement agreement, by Order dated November 20, 2000. The Insurance Company was allowed to deposit the insurance proceeds with the Court and was discharged from all liability. The Court then made the following rulings on the remaining issues:

1. The motion of Gordon Ray Potts Jr. to be heard via telephonic conference is respectfully denied.
2. The motion of Gordon Ray Potts Jr. for a jury trial on the motion for sanctions is respectfully denied.
3. The motion for continuance of the jury trial date of November 29th and 30th is hereby respectfully denied.
4. The motion of Plaintiff to prohibit Mary Potts Mayforth from representing her brother, Gordon Ray Potts Jr. is hereby granted.
5. The motion for Summary Judgment filed by Defendant Mary Potts Mayforth is withdrawn.
6. All motions for sanctions filed by Mary Potts Mayforth and Gordon Ray Potts Jr. against Plaintiff Pearl Lynell Potts and attorney Kathryn J. Dugger are hereby denied and the same are dismissed.
7. The motion for Sanctions against Gordon Ray Potts Jr. is hereby granted and Plaintiff is awarded a Default Judgment against Gordon Ray Potts Jr., . . . in

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1. This represented the money of the decedent deposited into the account of Gordon Ray Potts, Jr. together with expenses and attorney fees.

the sum of $36,652.88 [1] , for which execution may issue if not paid.

8. The motion of Mary Potts Mayforth is granted and Plaintiff is prohibited from hearing the Motion on Summary Judgment on November 27, 2000.

Plaintiff then filed a Motion to Reconsider, stating that the summary judgment motion with regard to the life insurance proceeds was originally filed with the Court in April of 2000, and
was continued for discovery and then rendered moot because of the removal to United States District Court. She maintained that it was impossible for her to have her Motion for Summary Judgment
heard in state court until the District Judge's Order from federal court was entered.

A hearing was held on November 22, 2000, before the Chancellor, and the Court found that plaintiff's Motion to Reconsider was well taken in that the Life Insurance portion of the case was remanded to Federal Court on July 19, 2000 and returned to State Court on October 30, 2000, thus creating a time conflict with the Court's Scheduling Order. The Court went on to consider the Motion for Summary Judgment, but neither Defendant was present for that hearing.

The Court noted that "Plaintiff's motion for Summary Judgment was filed on April 7, 2000 and defendants were give proper notice of hearing." The Court then found the material facts not to be
in dispute, and plaintiff was entitled to judgment as a matter of law, and awarded the life insurance proceeds to plaintiff.

We first addressed defendant's Motion for Sanctions, which was dismissed by the Trial Court. At the hearing, defendants were unable to produce any evidence, but Mayforth simply stated "this is a malicious prosecution case and we intend to file further sanctions upon retaining an attorney" and that "the claims that [Plaintiff] made in her Complaint were unfounded and that she

did not make due diligence in investigating the claims before she filed them and that it has caused both financial and emotional distress to both of the Defendants." Tennessee Rule of Civil Procedure 11.02 prohibits a party from submitting to the court a pleading, motion or other papers for the purpose of harassment or delay, and from advancing frivolous claims or defenses. Moreover, it provides that all allegations shall have evidentiary support or are specifically so identified or likely to have evidentiary support, after a reasonable opportunity for further investigation or discovery. The crux of defendants' complaint regarding the Plaintiff's conduct is that Plaintiff did not sufficiently investigate before filing her complaint. At the time plaintiff filed her complaint,
she did not have access to the change of beneficiary form, so she could not have known that it was unsigned. Upon discovery that it was not signed, plaintiff filed a summary judgment motion against
the Insurance Company. There is no evidence, as the Chancellor found, that the Plaintiff or her attorney acted in bad faith or with an intent to harass the defendants. We affirm the Trial Court on
this issue. -5-
Defendant Potts complains that he was not granted due process with regard to the hearing on the Motion for Sanctions. However, the record shows that the defendant had sufficient notice of the hearing. Despite this notice (and the Court's accommodation of defendant's request for a continuance), defendant Potts failed to appear at the hearing to offer any evidence in his defense.
His sister, Mary Mayforth attempted to represent him by filing and signing a response to the Motion for Sanctions. The Court properly found that she would not be allowed to represent her brother. The
case of *Shahrdar v. Global Housing, Inc.*, 983 S.W.2d 230 (Tenn. Ct. App. 1998) explains the propriety of granting a

default judgment as a sanction against a party who fails to comply with discovery orders. Rule 37.02(C) of the Tennessee Rules of Civil Procedure provides that a trial court faced with a party who fails to obey an order to provide discovery may render a judgment by default against the disobedient party. Although this sanction is extreme, it is appropriate "where there has been a clear record of delay or contumacious conduct." When a trial court exercises its discretion in rendering a default judgment as a sanction, its decision will be disturbed only upon a finding of abuse of that discretion. 983 S.W.2d at 236 (internal citations omitted).

Upon review of this extensive record, it is apparent that defendant Potts' conduct in the case was uncooperative at best. The Court found that Potts had "engaged in a course of conduct that is designed to totally frustrate this trial from going forward." The Court further found that the uncontradicted evidence establishes that Potts "has committed perjury, has lied under oath, in his interrogatories about these various checks . . ." This conduct by the defendant rises to such a level of contemptuous behavior, that the Trial Court acted within its discretion in entering a default judgment as sanctions for his misconduct. Of course, a default judgment "will not authorize a decree in favor of the plaintiff, unless the complaint shows a ground for relief against the defendant." *Shahrdar*, 983 S.W.2d at 236- 37. Plaintiff's averred that Potts by fraud or deceit, did steal money belonging to the deceased. Defendant Potts failed to produce his bank records from South Padre Bank and failed to answer truthfully the interrogatories pertaining the missing money from the deceased. The bank records from South Padre Bank showed deposits into the defendant's accounts for the exact sums of money missing from the decedent. These records, along with the evasive and deceitful conduct of the Defendant during discovery, establishes the basis for plaintiff's claim for relief against him. Defendant

Potts argues that the Court erred in denying him the right to a jury trial on his Motion for Sanctions entered and relies upon T.C.A. 21-1-103 for his alleged right to a jury trial. An exception to a jury trial in this State, is that one is not entitled to a jury in a contempt proceedings. *See Pass v. State*, 184 S.W.2d 1 (Tenn. 1945); *Weinstein v. Heimberg*, 490 S.W.2d 692 (Tenn. Ct. App. 1972). The sanctions requested by plaintiff were pursuant to Rule 37.02 for failure of a party to obey an order of the Court. Rule 37.02 allows a court to treat this disobedience of a court order as contempt. Accordingly, the defendant was not entitled to a jury trial. Defendants insist they did not have proper notice that the summary judgment Motion would be heard. While the defendants did not have notice that the Motion would be heard on November 27, 2000, it having previously been ruled that it would not be heard then, they did have notice that the Court was going to reconsider its prior ruling at that time. They also had ample time to respond to plaintiffs' April Motion for Summary Judgment by submitting evidence that would establish that summary judgment was improper. Because of the sufficient opportunity to show why summary judgment might be inappropriate, the defendants were not prejudiced by the Court's decision to rule on the Motion at the November hearing.

As to the merits of the summary judgment, the Trial Court found the following facts to be established and not disputed:

1. On October 9, 1995, the deceased, Gordon R. Potts Sr. named as primary beneficiary his wife, Pearl Lynell Potts on the life insurance policy issued by Defendant Connecticut General Life Insurance Company.

2. A subsequent change of beneficiary form was submitted to Connecticut General Life Insurance Company on July 23, 1999. The change of beneficiary form was not signed, nor dated by the owner decedent, Gordon R. Potts Sr.

3. Connecticut General Life Insurance Company policy provisions required the following to change a beneficiary. "Each Owner may change the Beneficiary at any time, unless

the Beneficiary designation is irrevocable. The change must be made on a form satisfactory to CG and signed by the Owner. No change of Beneficiary will take effect until this form is received by CG. Then this form is received, the change will take effect as of the date of the form. If the Insured dies before the form is received, CG will not be liable for any payment that was made before receipt of the form. Based on these facts, the Trial Court determined that as a matter of law, the attempted change of beneficiary was ineffective as it was not signed. The Court further found that the change of beneficiary form *did not substantially comply* with the requirements for a change of beneficiary as required by the Insurance Company. The Court found that there had been no response to each set of facts set forth by the plaintiff in accordance with Rule 56 of the Tennessee Rules of Civil Procedure. The Chancellor correctly found that there had been no substantial compliance with the policy requirements in this case. The form requesting change of beneficiary was not signed by the insured, nor was it dated. By filling out a portion of the form and submitting to the insurance company, the insured did not do all that he could to comply with the requirements of the policy. Because the form was not signed, as required, we hold that there was not substantial compliance with the requirements of the policy. *See Sun Life Assurance Co. of Canada v. Hicks*, 844 S.W.2d 652 (Tenn. Ct. App. 1992). We affirm the Trial Court's grant of a summary judgment. Finally, defendants argument that the Court erred in assessing costs against them is without merit. *See* Tennessee Code Annotated §20-12-101. We affirm the Judgment of the Trial Court and remand, with the cost of this appeal assessed jointly against the defendants Gordon R. Potts, Jr., and Mary Potts Mayforth.

"s/Herschel P. Franks"

HERSCHEL PICKENS FRANKS, J.

APPENDIX C-1

IN THE COURT OF APPEALS OF TENNESSEE AT KNOXVILLE

PEARL LYNELL POTTS, et al. V. MARY POTTS MAYFORTH, and GORDON RAY POTTS, JR.,et al.

Chancery Court for Carter County
No. 24432

FILED
01 SEP 18 AM 8:13
APPELLATE COURT
CLERK KNOXVILLE

No. E2000-031 16-COA-R3-CV

ORDER

Appellant's Motion to reconsider filed on July 6, 2001, is overruled.

"s/Herschel P. Franks"
Herschel P. Franks, Jr.

APPENDIX C-2

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

PEARL LYNELL POTTS, ET AL. v. MARY POTTS MAYFORTH, ET AL.

Chancery Court for Carter County
No. 24432

FILED
Clerk of the Courts
Jun – 1 2001

No. E2000-031 16-COA-R3-CV

ORDER

The appellee, Connecticut General Life Insurance Company, filed a motion requesting that this Court enter an Order declaring that appellee is not a party to this appeal. The appellants have not filed a response to the motion. Therefore, we find the motion to be well taken and it is GRANTED.

"s/D. Michael Swiney"

JUDGE, COURT OF APPEALS OF TENNESSEE

APPENDIX C-3

IN THE COURT OF APPEALS FOR THE STATE OF TENNESSEE EASTERN DIVISION

PEARL LYNELL POTTS, Individually and Executor of the Estate of Gordon Ray Potts, Sr., Deceased

Plaintiff/Appellee
vs. Case No.: E2000-03116-COA-R3-CV
On appeal from Carter County

MARY POTTS MAYFORTH, Chancery Court No. 24432
GORDON RAY POTTS, JR.,
Defendants/Appellants

and

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Defendant/Counter-Claimant!
Cross-Claimant/Movant

MOTION FOR AN ORDER DECLARING THAT CONNECTICUT GENERAL LIFE INSURANCE COMPANY IS NOT A PARTY TO THE APPEAL

COMES Connecticut General Life Insurance Company (hereinafter "Connecticut General") and moves the Court for an order declaring that Connecticut General is not a party to the appeal of this case, and in support of the motion the movant states as follows:

1. The notice of appeal filed by the appellants lists the specific orders and judgments from which relief is sought by the appellants. (R., Vol. IV, p. 448) (See copy of notice of appeal attached to this motion);
2. The specific orders and judgments listed in the notice of appeal do not include the order that resolved the issues as to Connecticut General, said order having been entered on November 20, 2000, granting Connecticut General's motion to enforce the settlement agreement, to allow the deposit of the insurance proceeds and to discharge Connecticut General from liability. (R., Vol. III, p. 374) (See copy of order attached to this motion);
3. Although the appellants have not appealed the order resolving the issues as to Connecticut General, counsel for Connecticut General has been served with notices and filings pertaining to the appeal;
4. In light of the fact that notices and filings are being served upon Connecticut General, this motion is being filed out of an abundance of precaution so that the Court can clarify that Connecticut General is not a party to this appeal.

Respectfully submitted this 18th day of May, 2001.

"s/ Regginald E. Keaton"
Reginald E. Keaton (BPR#011021)
FRANTZ, MCCONNELL & SEYMOUR, LLP
P.O. Box 39
Knoxville, TN 37901
(865) 546-9321
Attorney for Movant, Connecticut General Life Insurance Company

CERTIFICATE OF SERVICE

I certify that an exact copy of the foregoing document has been served upon the following:

Kathryn J. Dugger
DUGGER & COLE
615 Elk Avenue
Elizabethton, Tennessee 37643

Gordon Ray Potts, Jr.
1260 Grady Road
Forsyth, Missouri 65653
Alice Elizabeth Nelson
Route 2, Box 3097
Krum, Texas 76249

Mary Potts Mayforth
4012 Spruell Drive
Kensington, Maryland 20895

by mailing a copy to said counsel and parties in a properly addressed and stamped envelope regularly deposited in the United States Mail.

This 18th day of May, 2001.

"s/ Reginald E. Keaton"
FRANTZ, MCCONNELL & SEYMOUR, LLP Of Counsel

APPENDIX C-4

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

PEARL LYNELL POTTS, ET Al. v. MARY POTTS MAYFORTH, ET AL.

Chancery Court for Carter County
No. 24432

No. E2000-031 16-COA-R3-CV

ORDER

The record in this appeal was filed on April 30, 2001. A review of the record indicates that two defendants, Mary Potts Mayforth and Gordon R Potts, Jr., are appearing *pro se.* However, Mary Potts Mayforth is acting as an attorney for Gordon R. Potts, Jr.. Mr. Potts is allowed to proceedpro *se;* however, **Ms. Mayforth is not allowed to act as Mr. Pott's attorney**, as she has stated in various documents filed with the trial court[1] and in her fax transmissions to Ms. Dugger of October 11 and October 21,2000, contained in the R. at page(s) 341 and 343. Subsequent to the trial judge's order prohibiting Ms. Mayforth from practicing law in Tennessee without a license as attorney for Gordon Potts, Ms. Mayforth continued to attempt to represent him.

The appellate court clerk is directed not to file any documents submitted by Mary Potts Mayforth, on behalf of any other defendant, including Gordon R. Potts, Jr. Ms. Mayforth, acting *pro Se,* may file documents only on behalf of herself . She is not a licensed attorney in Tennessee.

"s/D. Michael Swiney"
JUDGE, COURT 0 F APPEALS OF TENNESSEE

[1] *Request for Jury Trial*, filed November 2, 2000, R. p. 231; *Amended Motion for Sanctions and Motion for summary Judgment in favor of Defendants Mary Potts Mayforth and Gordon R. Potts, Jr.*, Filed November 2, 2000, R.p. 322

APPENDIX C-5

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts Sr., Deceased
PLAINTIFF-APPELLEE

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR.
DEFENDANTS-APPELLANT

And

CONNECTICUT GENERAL LIFE
INSURANCE COMPANY
DEFENDANT-THIRD PARTY
PLAINTIFF- APPELLEE

vs.

ALICE ELIZABETH NELSON
THIRD PARTY DEFENDANT
APPELLEE

APPELLEE OBJECTS TO APPELLANT FILING DOCUMENTS WHICH ARE NOT PART OF THE TRIAL COURT FILE

Comes the Appellee, PEARL LYNELL POTTS, by and through her attorney, Kathryn J. Dugger and hereby objects to the Appellant introducing documents as part of the record that have never been introduced in evidence or filed in the trial court. Appellee, Pearl Lynell Potts hereby objects to Appellant's attempt to file and include in the record any documents listed by the Appellant and filed on December 27, 2000 titled"NOTICE OF PARTS OF THE

RECORD TO BE INCLUDED ON APPEAL". Appellee hereby objects to the fo1lowing numbered paragraphs: 2, 3, *5* (Appellee objects to only the documents produced, as these documents are not in the Court file, are voluminous and immaterial to issues on appeal) 6, 7, 8, 9, 10, 11, 12, 13, 14, *15,* 16, 17, 18, 19, 20, 21, 22, 24, *25,* 26, 27,29, 30, 31, *32.*

RESPECTFULLY SUBMITTED
Pearl Lvnell Potts

By: "s/Kathryn DuggerEdwards"

Her Attorney

Kathryn J. Dugger-Edwards
TN BPR #12964
Dugger & Cole
615 Elk Avenue
Elizabethton, TN 37643
(423) 542-4183
Attorney for Plaintiff Appellee

CERTIFICATE OF SERVICE

I, Kathryn J. Dugger, hereby certify that a true and exact copy of the foregoing Objections has been forwarded to Gordon R. Potts Jr., 1260 Grady Road, Forsyth, MO 65653, Mary Mayforth, 4012 Spurrell Drive, Kensington, MD 20895, Attorney Reggie E. Keaton, Frantz, McConnell & Seymour, LLP, P.O. Box 39, Knoxville, TN 37901, and Alice Elizabeth Nelson, 2242 FM 156, Krum, Texas 76249. by First Class United States mail, on this the 9th day of January, 2001.

"s/Kathryn Dugger Edwards"

Kathryn J. Dugger

APPENDIX C-6

NOTICE OF APPEAL OF CARTER COUNTY CIVIL ACTION No. 24432

Parties to Appeal:
MARY POTTS MAYFORTH and
GORDON RAY POTTS, JR.
Appellants)
PEARL LYNELL POTTS, KATHRYN J. DUGGER, and
CONNECTICUT GENERAL LIFE INSURANCE
COMPANY
Appellees
* *

Parties to the Original Action:
Pearl Lynell Potts,
Plaintiff
v.
Mary Potts Mayforth, Gordon R. Potts Jr., and
Connecticut General Life Insurance, Defendants
v.
Alice E. Nelson,
Third Party Defendant

NOTICE OF APPEAL TO TENNESSEE COURT OF APPEALS, KNOXVILLE, TENNESSEE FROM JUDGMENT OF CARTER COUNTY CHANCERY COURT

Notice is hereby given that "Gordon R. Potts, Jr.", pro se, and "Mary Potts Mayforth", pro se, Defendants-Apellants, in the above mentioned case, hereby appeal to the Tennessee Court of Appeals from the following Orders and Judgments:

1. That Defendant's Jury Trial scheduled for November 29-30, 2000 was cancelled by Court Order on November 27, 2000. These matters in the case have

not been adjudicated in case No. 24432, and we ask for proper dispensation:

a. The Plaintiff's Complaint claims that the Defendants stole property of the estate by coercing a mentally incompetent person. Defendants-appellants have not been allowed an evidentiary hearing on the charges of theft and incompetence, nor has the matter of the alleged "stolen" items being property of the Estate been addressed.
b. Amended Motion and Cross-Claim for Declaratory Judgment filed April 11, 2000 by Defendants- appellants was not adjudged. We ask that Declaratory Judgment be granted.
c. Plaintiff's Motion for Protective Order from Discovery filed November 6, 2000 was not adjudged. We ask that this motion be denied and Plaintiff be ordered to produce Discovery documents as requested.

2. We ask reversal of the *Summary Judgment* granted in favor of Pearl Lynell Potts on November 27,2000.
3. We ask reversal of the *Default Judgment* against Gordon R. Potts, Jr. on November 13, 2000, in response to Plaintiff's Motion for Sanctions.
4. We ask to overturn the *Order of Dismissal Without Prejudice* granted the Plaintiff without prior Motion filed on November 21, 2000.
5. We ask review of the *Order Bifurcating* the Insurance Issues from the other matters of the case, signed July 19, 2000; and the subsequent re-incorporation of these matters back into the case in the final weeks without due process.
6. We ask to overturn the *Motion to Reconsider Setting a Hearing Date for Summary Judgment* filed November 14, 2000 by the Plaintiff. This Motion was not heard, to Defendant's knowledge, before the

hearing for this Summary Judgment took place on November 27, 2000.

7. We ask to overturn the dismissal of *Defendant's Motion for Sanctions* filed October 9, 2000 and Amended October 30, 2000 and grant appropriate relief to the Appellants.
8. We ask that the case be reviewed for malicious prosecution and violations of appellant's rights to process.
9. We ask that relief be granted as asked for in *Defendants' responses to Order of Dismissal Without Prejudice* filed November 22, 2000; and, *Defendants' Response to Motion for Protective Order* filed November 17, 2000, in an amount equal to, but not exceeding the total amounts granted to the Plaintiff in these proceedings; inclusive of the beneficiary amount, the amount of $36,652.88 that the Plaintiff claims were stolen by coercion, plus all court costs and attorneys fees.

We believe that it is proper to appeal jointly, as there is no conflict of interest between the two appellants and all interests, proceeds and penalties are shared equally between Gordon R. Potts, Jr. and Mary Potts Mayforth. Appellants state that they were jointly sued on these issues, and that these issues cannot be separated, so it is fitting to file a joint appeal. This is the first Appeal being petitioned. A Bond in the amount of $1,000.00 has been placed with the clerk.

"s/Gordon R. Potts Jr" 12/5/00
Gordon R. Potts, Jr. Date

"s/Mary E. Potts Mayforth" 12/8/00"
Mary E. Potts Mayforth Date

CERTIFICATE OF SERVICE

I, Mary E. Potts Mayforth hereby certify that I have mailed a true and exact copy of the foregoing Notice of Appeal to the Clerk and Master of the Carter County Chancery Court and Appellees as follows:

Attorney for the Plaintiff, Kathryn J. Dugger, Dugger & Cole, 615 Elk Avenue, Elizabethton, 37643

And

Reggie E. Keaton, Frantz, McConnell and Seymour, LLP, P.O. Box 39, Knoxville, TN 37901

And

Alice Elizabeth Nelson, Route 2, Box 3097, Krum, Texas 76249

This __8th__ day of __Dec_, 2000

"s/Mary E. Mayforth"
Mary E. Mayforth

APPENDIX D-1

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

PEARL LYNELL POTTS, Individually and Executor of the Estate of Gordon Ray Potts, Sr., Deceased

Plaintiff,

vs. No. 2:P9-cv-344 JUDGE HULL

FILED DEC 2, 1999

MARY POTTS MAYFORTH, GORDON RAY POTtS, JR. and CONNECTICUT GENERAL LIFE INSURANCE COMPANY,

Defendants.

ORDER

The Court having entered an order on November 9, 1999, requiring the defendants to file a brief to establish that this action arose under the laws of the United States or otherwise the removal would be remanded to state court and the parties having now agreed to the entry of an order remanding the lawsuit to state court and the parties having further agreed that once the case is remanded to state court the defendant, Connecticut General Life Insurance Company, shall be allowed to deposit the insurance proceeds with the Court and will then be allowed to be dismissed from the lawsuit;

It is therefore hereby, ORDERED, ADJUDGED and DECREED that this lawsuit be and hereby is remanded to state court.

ENTER: "s/ Thomas Gray Hull"

Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

PEARL LYNELL POTTS, Individually and Executor of the Estate of Gordon Ray Potts, Sr., Deceased

Plaintiff,

vs. No. 2:99-cv-344 JUDGE HULL

FILED Oct 20, 2000

MARY POTTS MAYFORTH,
GORDON RAY POTtS, JR. and
CONNECTICUT GENERAL
LIFE INSURANCE COMPANY,
Defendants.

ORDER

This estate/insurance matter, which was remanded on December 2,1999, by an agreed order of remand approved by the Court, is before the Court to consider two motions to reopen this case.

On September 11, 2000 ,the.plaintiff filed a motion to recommend closing of this case and to congder reopening the case. Then on September 12, 2000, the defendants, Mary P. Mayforth and Gordon R. Potts Jr. filed motions to reopen the case and/or for relief from the agreed order of remand. The deendant, Connecticut General Life Insurance, opposes these motions. The parties seeking this relief contend that Connecticut General Life procured a settlement fraudulently and that a state court judge has removed the case back to federal court.

Originally, on September 30, 19s'9, at the time of the removal from state court, Connecticut General Life Insurance Company contended that the disposition of ERISA benefits formed the

crux of the plaintiffs' complaint After carefully reading the complaint, the Court 'found that the complaint neither indicated in anymanner that either insurance policy is an employee benefit plan, nor that the Plaintiff applied for and was denied benefits under either plan in violation of the terms of the plan. Therefore, it was ordered that the defendants would have up to and including November 22, 1999, to brief this issue and the plaintiff would haveup to and including November 30, 1999,to file a response.

However, instead of briefing the issue of whether or not this case involved an ERISA plan, the parties prepared and executed an agreed order of remand which was approved by the Court on December 2, *1999.* This order became final in January of 2000.

This agreed order approved by the Court only orders as follows:

" It is therefore hereby, **ORDERED, ADJUDGED** and **DECREED** that this lawsuit be and is-hereby REMANDED to state court."

This Court did not approve any purported settlement which this agreed order specifically states was to occur as follows: "once the case is remanded to state court, the defendant, Connecticut General Life Insurance Company, shall be allowed

to deposit the insurance proceeds with the Court and will then be allowed to be dismissed from the lawsuit."

Although there is an order, from the Chancery Court for Carter County dated July 19, 2000, which orders that the insurance portion of this lawsuit be removed from state court to federal court, there has been no compliance with Title 28 §1446 which provides as follows:

•§ 144-6.

Procedure for removal

(a)A defendant or defendants desiring to remove any

civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which suciraction is pending a notice of removal signed pursuant to:,Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant;through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a
case may not be removed -on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

Therefore, removal is only proper by the defendant(s), and There has been no compliance with the procedural or. time frames required by § 1446. In fact, any attempted removal at this late date would obviously be untimely.

Because lack of jurisdiction would make any decree in this case void and the continuation of the litigation in federal court futile, the Court must strictly construe the removal statute and all doubts must be resolved in favor of the remand. Because the parties elected not to resolve the issue of federal question jurisdiction but instead entered an agreed order of remand, this Court has no jurisdiction.

The agreed order approved by the Court is devoid of any evidemnce that the parties intended for the Court to retain jurisdiction of the enforcement of their agreement which is at best *dicta* in this order, inasmuch as this Court lost jurisdiction of this case upon ordering a remand. Therefore, the Court fmds,diar.a!ly resolution of the issue of the other agreements of the parties inserted into that order of remand cannot be made by this Court because in the absence of jurisdiction such ruling would be void.

This Court declines to set aside the agreed order of remand and this
Court FINDS that is has no jurisdiction enforce a settlement that was only to occur "once the case is remanded to state court". Pursuant to Title 28: § 1446(d), the State court can now proceed further because this case has been remanded.

Accordingly,it is hereby ORDERED that the motions to reopen this case filed by the plaintiff and the defendants, Mary P. Mayforth and Gordon R. Potts, Jr. are DENIED. [Docs. 8 and 9)

Enter: "s/Thomas Gray Hull"
THOMAS GRAY HULL
UNITED STATES DISTRICT JUDGE

APPENDIX E-1

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts Sr., Deceased
Plaintiff

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR.and
Connecticut General Life Insurance
Company
Defendants
and
Connecticut General Life Insurance
Company
Third Party Plaintiff

vs.

Alice Elizabeth Nelson
Third Party Defendant

ORDER

This cause came on to be heard on this the 27th day of November, 2000, before the Honorable Richard Johnson, Chancellor upon the Motion to Reconsider hearing Plaintiffs Motion for Summary Judgment and Motion for Summary Judgment. Attorney Kathryn J. Dugger appeared on behalf of the Plaintiff, Pearl Lynell Potts and Attorney

Reggie Keaton appeared on behalf of Connecticut General Life Insurance Company. The Court notes that Defendants Mary Potts Mayforth and Gordon Ray Potts Jr. were notified, although not present at this hearing. The Court finds that Plaintiffs motion to reconsider is well taken in that the Life Insurance portion of this case was remanded to Federal Court on July 19, 2000 and returned to this Court on October 30, 2000 which presented a time conflict with this Court's Scheduling Order entered August 29, 2000. The Court further finds that Plaintiff could not present the motion for Summary Judgment prior to October 30th, 2000 as the life insurance matter was in Federal Court and therefore, this Court did not have jurisdiction of the life insurance matter. The Court further finds the time constraints stated in the Scheduling Order for accomplishing certain tasks by a given date had expired when the life insurance case came back to this Court. Therefore, based upon these facts, the Court finds that the Scheduling Order was not applicable and agrees to hear Plaintiffs Motion for Summary Judgment today.

This Court notes that Plaintiffs motion for Summary Judgment was filed in this Court on April 7, 2000 and Defendants Mary Potts Mayforth and Gordon Ray Potts Jr. were given proper notice of hearing today and it appearing to the Court that neither were present at today's hearing.

This Court finds after reviewing the Motion for Summary Judgment and brief in support thereof, the argument of Attorney Kathryn J. Dugger, and upon the entire record finds the facts necessary to a determination of this motion appear to be the following:

1. On October 9, 1995, the deceased, Gordon R. Potts Sr. named as primary beneficiary his wife, Pearl Lynell Potts on the life insurance policy issued by Defendant Connecticut General Life Insurance Company.
2. A subsequent change of beneficiary form was submitted to Connecticut General Life Insurance

Company on July 23, 1999. The change of beneficiary form was not signed, nor dated by the owner decedent, Gordon R. Potts Sr.

3. Connecticut General Life Insurance Company policy provisions required the following to change a beneficiary. "Each Owner may change the Beneficiary at any time, unless the Beneficiary designation is irrevocable. The change must be made on a form satisfactory to CG and signed by the Owner. No change in Beneficiary will take effect until this form is received by CG. When this form is received, the change will take effect as of the date of the form. If the Insured dies before the form is received, CG will not be liable for any payment that was made before receipt of the form."

The Court finds and it is established that these facts are not disputed and there are no genuine issues as to any material fact for trial and this Court holds as a matter of law the attempted change of beneficiary form submitted on July 23, 1999 is ineffective as it was not signed by the insured owner, Gordon R. Potts Sr. and not dated. The Court further finds that the change of beneficiary form did not substantially comply with the requirements for a change of beneficiary as required by Connecticut General. The Court further finds that there has been no response to each fact set forth by the Plaintiff in accordance with Rule 56, Tennessee Rules of Civil Procedure. Therefore based upon the above and the entire record this Court finds that movant is entitled to Summary Judgment
as a matter of law and Plaintiff Pearl Lynell Potts is declared the sole beneficiary of the life insurance policy, No. 02-0972428 insuring the life of Gordon Ray Potts Sr. with Connecticut General Life Insurance Company.

The Court further finds there are no remaining issues for trial and finds that costs of this cause shall be taxed to

Defendants Mary Potts Mayforth and Gordon Ray Potts Jr., jointly and severally.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. In accordance with the findings set forth herein, Plaintiff is granted a hearingtoday November 27, 2000 on the motion for Summary Judgment.

2. In accordance with the findings of facts and conclusions of law set forth herein, Plaintiff Pearl Lynell Potts is granted Summary Judgment and declared the beneficiary of the Life Insurance policy No. 02-0972428 issued by Connecticut General Life Insurance Company in the amount of$104,000.00.
3. The Clerk is directed to pay the proceeds of the life insurance policy to Pearl Lynell Potts and attorney Kathryn J. Dugger.
4. Costs of this cause are taxed to Defendants Mary Potts Mayforth and Gordon R.Potts Jr., jointly and severally, for which penalty shall issue if not fully paid.

ENTER pursuant to TRCP Rule

"s/G.Richard Johnson"
Richard Johnson Chancellor

APPROVED:
"s/Kathryn J. Dugger"
Kathryn Dugger BPR#l2964
Dugger & Cole, Attorneys
615 Elk Avenue
Elizabethton, TN 37643
(423) 542-4183
Attorney for Plaintiff

"s/Reggie E. Keaton
Reggie E. Keaton, TN BPR#011021
Frantz, McConnell & Seymour LLP
P O. Box 39
Knoxville, TN 37901
(865) 546-9321
Attorney for Connecticut General Life Insurance Company

CERTIFICATE OF SERVICE

I, Kathryn J. Dugger, hereby certify that a true and exact copy of the foregoing ORDER has been forwarded to Gordon R. Potts Jr., 1260 Grady Road, Forsyth, MO 65653, Mary Mayforth, 4012 Spurrell Drives Kensington, MD 20895, Alice Elizabeth Nelson, Route 2, Box 3097, Krum, Texas 76249 by first class United States mail on this the 30th day of November, 2000.

"s/Kathryn J. Dugger"
Kathryn J. Dugger

APPENDIX E-2

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts Sr., Deceased
Plaintiff

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH,
GORDON RAY POTTS JR.,
Defendants and Cross-Defendants

And

CONNECTICUT GENERAL LIFE INSURANCE COMPANY
Defendant, Counter-Claimant
and Cross-Claimant

ORDER

The Court on November 13, 2000, having considered the Motion of Connecticut General Life Insurance Company for an order enforcing settlement agreement and allowing the deposit of insurance proceeds and a discharge from liability, and the Court having determined that the motion should be granted;

It is thereby ORDERED, ADJUDGED and DECREED that the motion of Connecticut General Life Insurance Company for an order enforcing settlement agreement and allowing the deposit of insurance proceeds and a discharge from liability be and is hereby granted;

It is further ORDERED, ADJUDGED and DECREED that upon the deposit by Connecticut General Life Insurance Company of the policy proceeds with the Court, Connecticut General Life Insurance Company will be discharged from all liability pertaining to the insurance policy proceeds.

It is ORDERED, ADJUDGED and DECREED that the clerk and master deposit the policy proceeds in an interest bearing account.

ENTER this ___ day of ___, 2000 (not dated)

"s/G.Richard Johnson"
Chancellor

Approved for Entry:
Frantz, McConnell & Seymour, LLP
BY: "s/Reggie E. Keaton"
Attorneys for Connecticut General Life Insurance Company
P.O. Box 39
Knoxville, Tennessee 37901
Telephone: (865) 526-9321

CERTIFICATE OF SERVICE

I certify that an exact copy of the foregoing document has been served upon the following:

Kathyrn J. Dugger
DUGGER & COLE
615 Elk Avenue
Elizabethton, Tennessee 37643

Gordon Ray Potts, Jr.
1260 Grady Road
Forsythe, Missouri 65653

Mary Potts Mayforth
4012 Spruell Drive
Kensington, Maryland 20895

Alice Elizabeth Nelson
Route 2, Box 3097
Krum, Texas 76249

By mailing a copy to said counsel and parties in a properly addressed stamped envelope regularly deposited in the United States Mail.

This 15th day of November, 2000

"s/Reggie E. Keaton"
Frantz, McConnell & Seymour

APPENDIX E-3

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS,
individually and Executor of the ESTATE OF GORDON RAY POTTS, SR., deceased,
Plaintiff,
vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and GORDON RAY POTTS, JR., and CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
Defendants.
and

CONNECTICUT GENERAL LIFE
INSURANCE COMPANY,
Third-Party Plaintiff,
vs.

ALICE ELIZABETH NELSON,
Third-Party Defendant.

HEARING ON MOTIONS

As had the 27th day of November, 2000

Before the Honorable G. Richard Johnson, Chancellor

Appearances:
For the Plaintiff: MS. KATHRYN J. DUGGER

For the Defendant Connecticut General: MR. REGGIE KEATON

MS. DUGGER: Your Honor, I have a motion to reconsider.
THE COURT: Okay. Is Ms. Mayforth here?
MS. DUGGER: I don't see her, your Honor.
(OFF THE RECORD)
THE COURT: When did you file your motion to reconsider?
MS. DUGGER: Your Honor, I filed the motion on November the 14th. And I mailed Ms. Mayforth, Mr. Potts and Ms. Nelson a copy on the 14th.
THE COURT: I'm a little confused, which is, in this case, not shocking, I don't guess, to anyone that's familiar with the case.
MS. DUGGER: No, your Honor, it's not.
THE COURT: Now, as I understand that what you're saying to me is, is that you filed a motion for summary judgement and that I would not hear it simply because the scheduling order was not complied with. Today, in your motion to reconsider, you're telling me that, true enough, the scheduling order was not followed, but the reason it was not followed was because Judge Stanley sent the insurance, life insurance, part of this case to federal court. The federal court sent it back. And when the federal court sent it back there wasn't enough time to give notice to hear
your motion, therefore you could not follow the scheduling order. Am I reading this right?
MS. DUGGER: Sure, your Honor.

THE COURT: Now, where the confusion comes in is this: I'm not sure what your motion for summary judgement is because sometime ago -- I say sometime ago, this month sometime, Mr. Keaton was here and I thought at that time we resolved that the insurance proceeds would be deposited into court.

MS. DUGGER: That issue was resolved. My motion for summary judgement, your Honor, is in reference to the beneficiary of the life insurance policy. I'm arguing that the change of beneficiary form was void because it was not signed by the insured, the decedent. I'm asking your Honor to rule on that in my motion for summary judgement. My motion for summary judgement was filed back in April of 2000. I set a hearing date, May 22nd. The Defendants, when they had an attorney, they moved for a continuance, which this Court granted, in order to add another party to this. Subsequently on June 12th Judge Stanley bifurcated the life insurance portion, remanded it to federal court. The only thing remaining in this court at that time was the cause of action for theft and recovery of estate assets. The scheduling order

which we entered into was entered on August the 29th of 2000. At the time the scheduling order went down this Court didn't have jurisdiction over the life insurance matter.

THE COURT: It was in federal court.

MS. DUGGER: It was in federal court. So, I'm asking for relief, asking, respectfully asking this court that the scheduling order doesn't apply to the life insurance portion of the case. When it was remanded back on October the 30th, we had twenty-nine days to get ready for trial. The scheduling order provides for parties shall do such-and-such things thirty days before trial, such-and-such things sixty days before trial. And there wasn't enough time, your Honor, for the scheduling order to be applicable to the case considering our trial date of November 29th and 30th. There was four months that I didn't know what court I was going to be in. I asked the federal court to hear my motion for summary judgement and federal court said, "Well, we don't have jurisdiction. Send you back to state court." So, when we got back to state court I filed my notice that I wanted my motion for summary judgement heard, which had been pending for seven months. And, your Honor,

response to my motion for summary judgement. When the Defendants had an attorney they could find no factual issues to dispute. I mean, the decedent,
he failed to sign the change of beneficiary form, and that fact cannot be disputed.

THE COURT: What do you have to say about this, Mr. Keaton?

MR. KEATON: Your Honor, the reason I'm here is that Ms. Dugger has filed a motion for interest against my client. So, I am not involved in the issues being addressed at this time.

THE COURT: Are you here on the attorney's fees and interest?

MR. KEATON: Yeah, and then you've got the interest part of it.

THE COURT: What day did you file your motion for summary judgement, this motion for summary judgement, the one we're talking about today?

MS. DUGGER: April 7th, 2000. It's the bottom one, your Honor.

THE COURT: This case is a law review with treatise.

MS. DUGGER: I have one for your Honor.

THE COURT: This question has got--this case has got more bar exam questions than--there it is. I was looking in the wrong file.

MS. DUGGER: This would make a good bar exam question.

THE COURT: What?

MS. DUGGER: This would make a good bar exam question.

THE COURT: I'm glad I didn't have to answer this question. Okay. Let's see. Oh yeah, I remember this now. I've read this before. Well, first, I will hear your motion for summary judgement, the Court recognizing that you were caught in a time bind. The scheduling order required you to

present your motions by a certain date. You could not present those motions because this cause had been referred by Judge Stanley to federal court. Federal court referred it back. By the time it was back in this court the time had expired for you to present your motions. I think this is an acceptable exception and the Court will hear your motion.

Second, I remember this now that we've gone back and reviewed it. This -- I think I was supposed to hear this at some point before it went to federal court. And it's a very basic issue. Here, the son and daughter of the deceased are accused, and it is alleged, that they denuded their father's estate by fraud and trick and artifice and just outright thievery. Those are the allegations. As a part of those allegations, Plaintiff, who is the executrix of the estate of the deceased brought it to the attention of the Court that the deceased had life insurance with Connecticut General and evidently was paid up. The deceased was the owner of the policy. That in order to change the beneficiaries under the policy, contractual procedures must be followed on the form provided by Connecticut General. Not only were the contractual procedures not followed, the decedent owner of the policy never signed or executed the change in beneficiary form. Therefore, the Plaintiff Executrix is simply asking for a summary judgement on the basis that this attempted change of beneficiary is invalid, null and void, because procedure was not followed and, most importantly, the decedent owner never signed the form. Motion granted. No genuine issues of material fact and the movant is entitled to judgement as a matter of law. Now, are we back to the other motion where you ask for attorney's fees and interest?

MS. DUGGER: Yes, your Honor.

THE COURT: Now, what is the basis for your asking for interest and attorney's fees? What's your authority or your basis for asking for attorney's fees and interest under these circumstances?

MS. DUGGER: Well, I'm not asking for attorney's fees,

your Honor, the Plaintiff is.

THE COURT: Oh, I'm sorry.

MS. DUGGER: I'm asking interest, your Honor, interest on the policy proceeds.

THE COURT: I see.

MS. DUGGER: There's a Tennessee statute that provides that -- it's 66-7-315, interest payable after receipt of claim, and it

reads, "An insurer of a life insurance policy or annuity issued for delivery in Tennessee with respect to a claim for benefits by reason of the death of the insured or the annuitant shall pay interest from the tenth work day following the date on which the insurer receives the death certificate to the date of payment of the claim.

"The rate of interest payable shall not be less than the interest currently paid by the insurer with respects to proceeds left on deposit." There is also a Tennessee statute, 47-14-123, which is a pre-judgement interest statute. "Pre-judgement interest. Interest is (unintelligible) the nature of damages as permitted by the statutory and common laws of the state may be awarded by courts or juries in courts with principles of equity at any rate not in excess of 10 percent." It's our position that normally these insurance proceeds would have been deposited at the out -- at the beginning of this case. And as of to-date they have not been deposited. The insurance company has held onto this money. Mr. Potts died August 19th, 1999. The insurance company -- they're getting ready to deposit the money, but they have not yet. And if they had deposited the money back in September of '99, that money would have been earning interest to date.

THE COURT: Okay, now, help me refresh my memory.

That statute says that, Number One, it's not mandatory, as I understand it; it's discretionary.

MS. DUGGER: That's correct.

THE COURT: And Number Two, if interest is to be paid, it's to be paid within ten days from the date they receive notice of the death. Isn't that correct?

MS. DUGGER: Yes, your Honor. They received notice on August the 30th of 1999.

THE COURT: So, what are you suggesting? Ten (10) percent?

MS. DUGGER: Yes, your Honor.

THE COURT: Okay.I'll be glad tohear you, sir.

MR. KEATON: Your Honor, this insurance policy was provided under an employee benefit plan. So, this case is actually governed by ERISA. But under ERISA the Court -- it is still a discretionary matter with the Court with regard to whether to award interest. I have a Sixth Circuit opinion that was rendered this year. And you'll see on the...

THE COURT: Sheriff, do you want to pass that up, please?

MR. KEATON: You'll see on the last page of that opinion under Footnote No. 3, it says, ERISA does not require an award of pre-judgement interest to a prevailing plan participate, although a district court has the discretion to grant such an award in accordance with equitable principles.!! Your Honor, my client has diligently tried to get these proceeds deposited with the court. The insurance date of death is August 19th, '99, and the Plaintiff went ahead and filed a lawsuit within a month of the death. They filed a lawsuit on

September 1, 1999 and since it was ERISA it was moved to federal court. And we entered an agreement at that time with the parties for us to deposit the proceeds and be dismissed from the lawsuit. So, it was sent back to state court so we could deposit the proceeds. And then once we got back to state court, the...

THE COURT: Actually, you could have deposited the proceeds the minute you received notice of the death back in August of '99, couldn't you? What prevented you from depositing the proceeds into court and saying, "Here, you all decide who it belongs to and all of the issues that have arisen. And we owe it to somebody. Court, you just decide and you pay it out"? Why didn't you do that?

MR. KEATON: Well, we thought we would need to get a court order granting us permission to do that. And the...
THE COURT: You thought you would need a court order?
MR. KEATON: Yeah, granting us permission to deposit the proceeds. We filed the...
THE COURT: I don't think you're going to have any trouble with any of the three civil judges here signing an order saying, "May we give the court some money to hold?"
MR. KEATON: Well, we also .. the other obstacle for us doing that is that the codefendants filed a motion to amend their claim so that they could stake a claim against us that we had improperly processed the proceeds -- I mean, processed the change of beneficiary. And therefore, they said that "Even if you deposit the proceeds into the court, we're not going to agree to discharge you from liability in this case."

THE COURT: Well, so what? So what?

MR. KEATON: Well, the fact of the matter is, your Honor, then we filed a motion to enforce the settlement agreement once we got back to state court, and it was opposed. And then we went back to federal court and we asked the federal court to enforce the settlement agreement. And then they sent it back to state court. So, we filed another motion to enforce settlement agreement in state court. So, that's three times we tried to get the settlement agreement enforced. We thought that that would be the proper procedure, procedurally the proper way, to get the proceeds into court. So.

THE COURT: Has the insurance company made more than 10 percent on this hundred and four thousand ($104,000.00) dollars?

MR. KEATON: I have no idea what they would make on that money. I do know that the Tennessee statute says that the rate of interest shall not be less than the interest currently paid by the insurer with respect to proceeds left on deposit. And I would suggest that if the Court deems that the Court should award interest pursuant to the statute, that we get an affidavit from the insurance company outlining what that interest rate is. So, that would be the guide. But...

THE COURT: You don't have that kind of information for me today?

MR. KEATON: No, your Honor. I called my client this morning. They were out of the office last week. I got this motion for interest, and by the time I got the motion and

tried to get in touch with my client they were on vacation las week. And I got in touch with her this morning and she says, "Three (3) percent." And I -- so, I tried to question her as to whether or not that's the rate that is paid on the proceeds left on deposit. And the person I was communicating with was in the legal department and she didn't know, but she said that the claims people were telling her that this is the rate that they pay in Tennessee. And I'm assum --- they say they pay it from ten days after the death certificate is submitted to the insurance company, which is what this statute says. So, the word I got was 3 percent, but I don't-- I can't vouch fo that.

THE COURT: Well, the Court of Appeals may set at 3 percent, but... Let me ask you this, Mr. Keaton: You rel upon that Shelby v Southern Case out of the Sixth Circui which says that in ERISA matters, such as this is part o ERISA, these insurance proceeds you say are part of ERISA the Sixth Circuit says that -- doesn't the Sixth Circuit rel upon the pre-judgement interest statute and therefore say that the matter is determined by the statute that permits pre judgement interest and that it is therefore discretionary an the standard is abuse of discretion. Isn't that what that cas says?

MR. KEATON: Well, of course, this case -- the onl thing this case says about interest is in this footnote. So, doesn't really address that issue. I know -- the federal court may use as a
guideline the pre-judgement interest rate under federal law but I don't know. The only thing I know from this case is tha they're saying that it's discretionary with the Court whethe to award...

THE COURT: Well, ...

MR. KEATON: It says equitable principles, and my argument is that equitably we've done everything that we thought was proper procedurally to do to try to get the money into court. And therefore, we should not have to pay the interest.

THE COURT: Okay. I'll be willing to listen to anything else you have to say. Are you finished?

THE COURT: Let's see here now. What was the date that the insurance company received notification? September?

MR. KEATON: Your Honor, I asked that question this morning of my client, and she said the death certificate was received on September the 20th, 1999. What I have, I did have a letter in my claim file which was sent to the children dated August 30th, 1999 in which they were requesting a certified copy of the death certificate. So, that's the only thing I have, firsthand, in my file. The fact that they received the death certificate on December the 20th -- I mean, September the 20th was just hearsay on my part.

THE COURT: Okay.

THE COURT'S OPINION

THE COURT: The Court, pursuant to 57-7-315, c alternatively 47-14-123, or alternatively on the basis c equitable principles finds that the insurance company coul have deposited the insurance proceeds into the registry of th court as early as September 20, 1999, that they have made n effort to deposit the proceeds of this policy into the cour They were aware that they owed them, the policy proceed They were unaware to whom they should pay them becaus of many legal questions, but that should not have prevente them from depositing these proceeds into court and lettin the court earn interest on those proceeds.

The Court finds that the Defendant Connecticut Genera shall pay 10 percent interest from September 20, 1999 to th date that the proceeds are deposited into the registry of th court

MS.DUGGER:YourHonor,having-Ihave filed a non-suit, ar your Honor ruling that--granting my motion for summa judgement there are no issues for trial, ...

THE COURT: Okay, now, what? What's this about the no suit now? What?

MS. DUGGER: I entered a non-suit with regard debts by Ms. Mayforth and recovery of assets of the estat That was entered last week. So, therefore there are no issu for trial on this date. I would ask that your Honor to asse court costs in this matter.

THE COURT: To the Potts and Mayforth.

MS. DUGGER: Pardon me?

THE COURT: Potts and Mayforth. Is that it?

MS. DUGGER: That's all.

THIS CONCLUDES THE HEARING ON MOTIONS AS HAD THE 27TH DAY OF NOVEMBER, 2000.

I, Billie Jo Woody, Court Reporter and Notary Public for the State of Tennessee do hereby certify that the foregoing is a true and complete transcript of the Hearing on Motions, as recorded the 27th day of November, 2000, and same transcribed to the best of my ability and understanding.

WITNESS MY HAND AND OFFICIAL SEAL in office in Johnson City, Tennessee; this the 4th day of December, 2000.

"s/Billie Jo Woody"
NOTARY PUBLIC

My commission expires

October 28, 2002

APPENDIX F

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, Individually And Executor of the Estate of Gordon Ray Potts Sr., Deceased
Plaintiff
vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR. and
Connecticut General Life Insurance Company
Defendants

And

Connecticut General Life Insurance Company
vs.

Alice Elizabeth Nelson

ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO PART OF PLAINTIFF'S CLAIM FOR RELIEF AS TO DEFENDANTS MARY P0TTS MAYFORTH AND GORDON R. POTTS JR.

In this cause, it appearing to the Court that the Plaintiff has moved pursuant to Rule 41.01(1), Tennessee Rules of Civil Procedure, to withdraw and dismiss without prejudice as to:

1. Defendant Mary Potts Mayforth, the Plaintiffs claim for damages for theft as set forth in TCA ~7 1-6-120

including reasonable expenses and attorney fees as provided by said statute, recovery of $25,000.00 belonging to the Estate, recovery of the cash value of the Aetna Life Insurance Policy, recovery of the Rolex watch, hearing aid, the 1989 Ford truck, camping and fishing equipment, the two dogs and a judgment for the value of these items not to exceed $50,000.00.

2. Defendant Gordon R. Potts Jr., the Plaintiffs claims for recovery of the Rolex watch, hearing aid, the 1989 Ford truck, camping and fishing equipment, the two dogs and a judgment for the value of these items not to exceed $50,000.00.

IT IS ACCORDINGLY SO ORDERED that the Plaintiffs claim for damages against Defendant Mary Potts Mayforth based upon theft of $39,225.47 as provided by TCA ~7 1-6-120, reasonable expenses and attorney fees as provided by TCA ~7 1-6-120, recovery of $25,000.00 belonging to the Estate, recovery of the cash value of Aetna Life Insurance Policy, recovery of the Rolex watch, hearing aid, the 1989 Ford truck, camping and fishing equipment, the two dogs and or judgment for the value of these items not to exceed $50,000.00 is hereby withdrawn and dismissed without prejudice, thereby restricting the relief prayed for by the Plaintiff under the cause of action solely to a declaration of the lawful beneficiary of the Connecticut General Life Insurance policy proceeds insuring the life of Gordon R. Potts, Sr.

IT IS ACCORDINGLY SO ORDERED that the Plaintiffs claim for damages against Defendant Gordon R. Potts Jr. for recovery of the Rolex watch, hearing aid, the 1989 Ford truck, camping and fishing equipment, the two

dogs and or judgment for the value of these items not to exceed $50,000.00 is hereby withdrawn and dismissed without prejudice, thereby restricting the relief prayed for by the Plaintiff under the cause of action solely to a declaration of the lawful beneficiary of the Connecticut General Life Insurance policy proceeds insuring the life of Gordon R. Potts, Sr.

ENTER pursuant to Tennessee Rules of Civil Procedure Rule 58.

"s/G. Richard Johnson"
G. RICHARD JOHNSON CHANCELLOR

APPROVED: "S/Kathryn Dugger"
Kathryn J. Dugger, TN BPR #12964
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Kathryn J. Dugger, hereby certify that a true and exact copy of the foregoing Order of Dismissal without Prejudice has been forwarded to Gordon R. Potts Jr., 1260 Grady Road, Forsyth, MO 65653; Mary Mayforth, 4012 Spurrell Drive, Kensington, MD 20895; Attorney Reggie E. Keaton, Frantz, McConnell & Seymour, LLP, P.O. Box 39, Knoxville, TN 37901; and Alice Elizabeth Nelson, Route 2, Box 3097, Krum, Texas 76249, by First Class United States mail, on this the 21st day of November, 2000.

"S/Kathryn Dugger"
Kathryn J. Dugger

APPENDIX G-1

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts Sr., Deceased
Plaintiff
vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR.and
Connecticut General Life Insurance
Company
Defendants
and
Connecticut General Life Insurance
Company
Third Party Plaintiff

vs.
Alice Elizabeth Nelson
Third Party Defendant

ORDER

This cause came on to be heard on this the 13th day of November, 2000, before the Honorable Richard Johnson, Chancellor of the Chancery Court upon the Motion for Sanctions filed by Plaintiff against Defendant Gordon R. Potts Jr., motion for jury trial on sanctions filed by Gordon R. Potts Jr., motion of Gordon R. Potts to appear via telephone, motion for sanctions filed by Mary Potts Mayforth, motion of

Defendant Mary Potts Mayforth and Gordon R. Potts Jr. to continue the trial date of November 29th and 30th oral motion of Plaintiff to prohibit Mary Potts Mayforth from representing or acting as attorney for Gordon R. Potts Jr., motion of Mary Potts Mayforth to deny Plaintiffs hearing for Summary Judgment as violating Scheduling Order, motion of Mary Potts Mayforth to withdraw Motion for Summary Judgment against Plaintiff, the U.S. District Court remand of the Life Insurance portion of this case back to, State Court on October 20, 2000 , the appearance of Defendant Mary Potts Mayforth, attomey Kathryn J. Dugger, attomey Reggie Keaton, arguments of counsel and upon the entire record, whereupon it appeared to the Court as follows:

(1) The motion of Gordon R. Potts Jr. to be heard via telephonic conference is respectfully denied and the Court finds that Defendant Gordon R. Potts Jr. was given ample opportunity and notice to be here today and he decided not to be here and the court is unable to arrange a telephone conference with Gordon R. Potts Jr. in Missouri.

(2) The Court finds that Gordon R. Potts Jr. is not entitled to a jury trial on the motion for sanctions.

(3) The Court finds that the motion for continuance of the trial date is hereby denied even though all parties agreed to the motion. The Court finds that Defendants have had ample time to hire an attorney, this matter has been on the docket forever and when it got to one and a half volumes, this court called a stop to the proceedings because the parties, vis-a-vis their attorneys, were spinning their wheels and not making any progress and a scheduling Order went down in May 15, 2000, and this Court has not been presented any good reason for this case to be continued and therefore the motion to continue is denied.

(4) The Court finds that the Constitution permits people to represent themselves, but a non-lawyer is not permitted to represent a lay person in this court and finds that Mary Potts Mayforth a lay person, non lawyer may not represent her brother, Gordon Ray Potts, Jr.

(5) The Court finds that the motion of Mary Potts Mayforth for Summary Judgment motion is withdrawn per oral request of Ms. Mayforth.

(6) The Court finds after hearing arguments of Mary Potts Mayforth and Attorney Kathryn J. Dugger that all motions for sanctions filed by Mary Potts Mayforth and Gordon Ray Potts Jr. against Plaintiff Pearl Lynell Potts and attorney Kathryn J. Dugger are hereby denied and same are dismissed.

(7) The Court finds after hearing the motion for Sanctions filed by Plaintiff against Defendant Gordon R. Potts Jr., arguments of Attorney Kathryn J. Dugger, the court finds that Mary Potts Mayforth as a lay person cannot. come into court as a lawyer and represent her brother Gordon Ray Potts Jr. as Gordon R. Potts Jr. chose not to attend today and this Court was asked to do this by telephone and the Court doesn't have the means to do that. The Court further finds that Mr. Potts has embarked upon and engaged in a course of conduct that is designed to totally frustrate these procedures, not only the interrogatories, not only the oral in person discovery, not only the request for production, but this file reflects that Mr. Gordon Ray Potts, Jr. has been on a course of obstructing justice of failing to timely answer interrogatories. That he has engaged in a course of conduct that is designed to totally frustrate this trial from going forward. This Court finds that Gordon Ray Potts, Jr. by the evidence presented today and no contrary evidence appearing has committed perjury, has lied under oath in his

appearing has committed perjury, has lied under oath in his interrogatories about these various checks that were sent to his father, made payable to his father and which Mr. Gordon Ray Potts, Jr. is alleged of stealing and in fact, these checks about which Mr. Gordon Ray Potts, Jr. denied knowledge and so on, were in fact, in his possession and deposited into his account. The Court finds that Mr. Gordon Ray Potts Jr.'s conduct is gross. It's not someone who doesn't know what they're doing. The record reflects that he is a sophisticated man. He's an educated man. This record reflects that he evidently has a responsible job and Mr. Potts is attempting to frustrate this Court at every point. Mr. Gordon Ray Potts has refused to abide by the former orders and decrees of this Court ordering him to supply information, ordering him to answer interrogatories, ordering him to comply with the various statutory and rule discovery requests. The Court finds as a result and imposes sanctions against Mr. Gordon Ray Potts, Jr. for his total effort and with success of frustrating discovery, with failure to follow these Court's orders, for obstructing justice, for his lying under oath. In accordance with Rule 37, Tennessee Rules of Civil Procedure and the case of Shadrdar v. Global Housing Inc. 983 S.W.2d 230 (Ct. of Appeals 1998) the Court awards a default judgment pursuant to the Plaintiff's claim, of theft in accordance with TCA 71-6-120 against Mr. Gordon Ray Potts Jr. in favor of the Plaintiff in the sum of $35,927.88, representing money of the decedent deposited in the South Padre Bank account owned by Gordon R. Potts Jr. together with expenses of $100.00 for the amount South Padre Bank charged Plaintiff for producing the bank statements, and attorney fees in the amount of $625.00 for a total Judgment of $36,652.88.

(8) The Court finds that the Motion for Summary Judgment filed by Plaintiff and set for hearing on November 27, 2000 violates this Court's scheduling Order as the deadline for hearing motions shall be on or before ten days before trial.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. The motion of Gordon Ray Potts Jr. to be heard via telephonic conference is respectfully denied.
2. The motion of Gordon Ray Potts Jr. for a jury trial on the motion for sanctions is respectfully denied.
3. The motion for continuance of the jury trial date of November 29"' and 30"' is hereby respectfully denied.
4. The motion of Plaintiff to prohibit Mary Potts Mayforth from representing her brother, Gordon Ray Potts Jr. is hereby granted.
5. The motion of Summary Judgment filed by Defendant Mary Potts Mayforth is withdrawn.
6. All motions for sanctions filed by Mary Potts Mayforth and Gordon Ray Potts Jr. against Plaintiff Pearl Lynell Potts and attomey Kathryn J. Dugger are hereby denied and same are dismissed.
7. The motion for Sanctions against Gordon Ray Potts Jr. is hereby granted and Plaintiff is awarded a Default Judgment against Gordon R. Potts Jr., Social Security Number 267-73-9 169 in the sum of $36,652.88, for which execution may issue if not paid.
8. The motion of Mary Potts Mayforth is granted and Plaintiff is prohibited from hearing the Motion for Summary Judgment on November 27, 2000.

APPROVED:

"s/Kathryn Dugger"
Kathryn J. Dugger TNBPR#12964
Dugger & Cole
Attorneys
615 Elk Avenue
Elizabethton, TN 37643
(423) 542-4183
Attorney for Plaintiff

Reggie E. Keaton, TN BPR #011021
Frantz, McConnell & Seymour LLP
P.O. Box 39
Knoxville, TN 37901
(865) 546-9321
Attorney for Connecticut General
Life Insurance Company

CERTIFICATE OF SERVICE

I, Kathryn J. Dugger, hereby certify that a true and exact copy of the foregoing ORDER has been forwarded to Gordon R. Potts Jr., 1260 Grady Road, Forsyth, MO 65653, Mary Mayforth, 4012 Spurrell Drive, Kensington, MD 20895, Alice Elizabeth Nelson, Route 2, Box 3097, Krum, Texas 26249 by first class United States mail on this the 21st day of November, 2000.

"s/Kathryn Dugger"

APPENDIX G-2

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of Gordon Ray Potts, Sr.,
Deceased
Plaintiff

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR. and
Connecticut General Life Insurance Company
Defendants
And
Connecticut General Life Insurance Company
Third Party Plaintiff
vs.

Alice Elizabeth Nelson
Third Party Defendant

ORDER DISMISSING MOTION FOR CONTEMPT

This cause came to be heard before the Honorable Richard Johnson, Chancellor, upon the motion of Plaintiff to withdraw and dismiss the motion for Contempt against Defendant Gordon Ray Potts, Jr. , which the Court grants. IT IS THEREFORE, ORDERED ADJUDGES AND DECREED that the Motion for Contempt filed by the Plaintiff against Defendant Gordon Ray Potts Jr. is hereby withdrawn and dismissed.

ENTER pursuant to TRCP Rule 58

"s/ . Richard Johnson
RICHARD JOHNSON CHANCELLOR

APPROVED: "s/Kathryn Dugger"
Kathryn J. Dugger, TN BPR #12964
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Kathryn J. Dugger, hereby certify that a true and exact copy of the foregoing Motion has been forwarded to Gordon R. Potts Jr., 1260 Grady Road, Forsyth, MO 65653, Mary Mayforth, 4012 Spurrell Drive, Kensington, MD 20895, Attorney Reggie E. Keaton, Frantz, McConnell & Seymour, LLP, P.O. Box 39, Knoxville, TN 37901, and Alice Elizabeth Nelson, Route 2, Box 3097, Krum, Texas 76249. by First Class United States mail, on this the 21st day of November, 2000.

"s/Kathryn Dugger"
Kathryn J. Dugger

APPENDIX G-3

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually and Executor of the Estate of GORDON RAY POTTS, SR. deceased,
PLAINTIFF,

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and GORDON RAY POTTS, JR., and CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
DEFENDANTS.

and

CONNECTICUT GENERAL LIFE INSURANCE COMPANY,
THIRD PARTY PLAINTIFF,
vs.

ALICE ELIZABETH NELSON,
THIRD PARTY DEFENDANT.

HEARING ON MOTIONS

AS HAD THE 13TH DAY OF NOVEMBER, 2000
APPEARANCES:

For the Plaintiff: MS. KATHRINE DUGGER

For the Defendant and Third Party Plaintiff: MR. REGINALD KEATON
For the Defendants: PRO SE

This Hearing on Motions came on to be heard before the Honorable Richard Johnson holding Chancery Court for Carter County at Elizabethton, Tennessee, the 13th day of November, 2000, when the following proceedings were had, to-wit:

THE COURT: I'll have to deny the motion of Mayforth for this matter to be heard vis--a--vis the telephonic conference. I can't get that arranged in this courtroom. He knew we were going to be here today and I'm confident that his sister will--who at our last hearing said she was going to represent them will do a good job. So whoever draws the motion for today respectfully the motion for us to **is** do this by telephone so that Defendant Gordon Ray Potts, Jr. may participate is respectfully denied. He was given ample opportunity and notice to be here today and evidently he decided he had to work rather than come from Maryland, I think.

MS. MAYFORTH: No, no, sir, he lives in the middle of nowhere Missouri, it's like a fifteen hour drive.

THE COURT: Middle of nowhere Missouri.

MS. MAYFORTH: Yes.

THE COURT: Well, he could still be here. Motion respectfully is denied.

MS. MAYFORTH: He also wanted me to submit his response to this today to you.

THE COURT: Okay.

MS. DUGGER: Is that what you handed to me this morning.

MS. MAYFORTH: You've already got a copy of it.

THE COURT: Let me look at what she handed me. I'm assuming that it's filed.

MS. MAYFORTH: That's -- no, it's just being filed today. Ms. Dugger has a copy. I gave her a copy at 8:30 this morning and faxed her a copy. I do want you to know, your Honor, I have another interview with an attorney this afternoon. We're still trying to find representation and we're doing the best we can. We have voluminous files and it's very difficult since we live in two states to interview people.

MR. KEATON: Do you have another copy of that, what you filed...

MS. MAYFORTH: Oh, from Chip? Hold on just a second here.

THE COURT: So for the Court's consideration today we have Defendant's Motion to Continue the November trial, I think it's November 29th and 30th, isn't it?

MS. MAYFORTH: Yes sir.

MS. DUGGER: We have agreed, your Honor, to continue that trial date. The insurance company, Mr. Reggie Keaton here represents the insurance company. He has also agreed to continue that trial date due to the fact the Federal Court remanded this case back to State Court here recently.

THE COURT: How recently?

MS. MAYFORTH: This month.

MS. DUGGER: This month.

THE COURT: Well, yeah, so? So they remanded it back, so what?

MS. DUGGER: Well, another reason we want a continuance also is they want -- they've asked for time to hire an attorney. The Court gave themthirty...

THE COURT: They've had lots of time to hire an attorney.

MS. DUGGER: The Court gave them thirty days.

THE COURT: They had a good attorney and they fired him.

MS. MAYFORTH: Your Honor, there are also like certain discovery items that have yet to be produced in our defense as well as all parties having agreed that perhaps it'd be better heard on the 2001 Docket.

MS. DUGGER: I have a Motion for Summary Judgment, your Honor, with regards to the insurance proceeds which I have cited them in to appear on the 27th, which is the next miscellaneous day. So depending .

THE COURT: What's the insurance part of this dispute?

MS. DUGGER: There was a life insurance policy, my client was named as beneficiary. A month before he died he changed, there was a change of beneficiary form sent into the insurance company that was not signed. And my Motion for Summary Judgment is for the Court to declare that change of beneficiary form void as it was not executed by the deceased, by the owner of the policy as required.

THE COURT: It was not signed, right?

MS. DUGGER: Right.

THE COURT: Unsigned. Undated.

MS. MAYFORTH: But it was processed,that's the problem. Nobody knows right now, there's going to have to be a lot of evidence presented.

THE COURT: Are you contending that a change of beneficiary form that is unsigned and undated by the owner of the policy has some meaning just because an insurance company processed it? Is that your contention?

MS. MAYFORTH: Yes sir, it is. And they confirmed it in a letter.

MS. DUGGER: That's addressed in my Motion for Summary Judgment, your Honor which it was filed in April, 2000. There's been no response. It was set one time before this Court. Defendants moved for a continuance and we were before your Honor in Erwin and your Honor granted them the continuance in order to do some discovery. In between that time is the case was bifurcated by Judge Stanley. It was sent back to Federal Court. Federal Court has issued an order that they have no jurisdiction of the case anymore and remanded it back to State Court on October the 20th. After..

MS. MAYFORTH: We did file a response, it was just in a district -- U.S. District Court and I believe now it's a non-jurisdictional. I'm supposed to have like a year to file the new pleading. It's really messed up. I wish I could...

THE COURT: What's with..

MS. MAYFORTH: . . .explain it in more succinct terms.

THE COURT: What is the problem with Connecticut General, you represent Connecticut General?

MR. KEATON: Yes, your Honor. We have a Motion pending to basically just allow us to put the proceeds into the court.

THE COURT: Wash your hands of it and go your way?

MR. KEATON: Yeah, and go on.

THE COURT: What's the problem with that?

MS. MAYFORTH: They -- they made a mistake and we're contending that due to their mistake that was what the amount that we were sued for. My brother and I have spent many, many thousands of dollars already on this case. And we would have never have had the case brought against us had they processed the form. They told us that we were the beneficiaries initially, not the Plaintiff. And therefore we're not going to just let them back out and deposit because here we've been sued over something and they told us we were beneficiaries.

THE COURT: You filed a...

MS. MAYFORTH: And now they're saying we're not. I don't understand.

THE COURT: Have you filed a counter- suit against the insurance company, or that would be a cross claim, against the insurance company? Have they sued you?

MR. KEATON: Not yet, your Honor. There is a motion, they have a motion pending, but-- but there's no order yet. So it's -- there's no suit pending against us.

MS. MAYFORTH: We're waiting for the results from the District -- U.S. District Court, the motion was filed there and we intend to file a motion against the insurance company in State Court as the Federal Court adjudged. Your Honor, I also need to bring out the small issue of the court reporter. I'm agreeing to share per diem. I may need a transcript of this hearing and it's my understanding that Ms. Dugger did not want to share per diem, but I -- since I'll probably be asking for a transcript I'm willing to pay the court reporter's, you know, my portion of her fee.

MS. DUGGER: If she wants to pay half that will be fine with me, your Honor. Due to the allegations she's made against me, your Honor, I do not want to communicate with her other than by written communications. And I'd also like for your Honor to address the issue of whether she can represent her brother. She is not an attorney.

MS. MAYFORTH: I am not representing my brother. My brother requested the continuance, I mean, the request for a jury trial himself. He offered to testify by telephone.I am not representing my brother. My brother is representing himself pro se.

MS. DUGGER: She has filed pleadings in this court, your Honor, stating that she is the attorney for Defendant Gordon Potts.

MS. MAYFORTH: For both -- acting as attorney for both of us during the certificate of service. I have not acted as his attorney. I am not representing him. I'm representing my interest in this case. He is representing his interest where you have sued him separately. I have filed intent that I am going to file malicious prosecution against Ms. Dugger. She's received those papers this morning.

MS. DUGGER: Is that what you handed me?

MS. MAYFORTH: It's one of the things I handed you this morning. That is not for hearing..

THE COURT: Let me ask you, Mr. Keaton, right?

MR. KEATON: Yes, your Honor.

THE COURT: I've read your motion and there's one part I don't understand. In Section 3 you say the parties entered into an agreement. Now, the parties being who?

MR. KEATON: All of the parties to the lawsuit. We -- the case was initially filed in State Court and then we removed it, the Defendants, all Defendants removed it to Federal Court. And Federal Court entered an Order asking that the jurisdiction question be briefed. And instead of doing the briefing, we-- the lawyers discussed it and we...

THE COURT: What...

MR. KEATON: All parties agreed to...

THE COURT: What about these folks? What about the...

MS. DUGGER: Stan Givens was representing Defendants Mayforth and Defendant Potts. I was representing the Plaintiff.

THE COURT: Who was representing Defendants Mayforth and Potts?

MR. KEATON: Stan Givens.

MS. MAYFORTH: At the time he was. I had some issues with Mr. Givens. I didn't know about the agreement. He didn't contact me, return my calls for several months. And there's the fact that I'm saying that Order of Agreement is invalid because the insurance company...

THE COURT: Is there an Order?

MS. MAYFORTH: .. .withheld information about the form not being signed.

THE COURT: Signed by whom? Who were . .

MR. KEATON: Your Honor, there is an Order that was entered in Federal Court approved by the attorneys, me, Stan Givens and...

MS. DUGGER: Myself.

MR. KEATON: .. .Kathy Dugger.

MS. MAYFORTH: But I had no knowledge of it nor did my brother at that time.

THE COURT: Well, of course, you're assumed to have knowledge because your attorney agreed to it and had knowledge. And your attorney's knowledge is your knowledge, therefore, the Court grants the Motion of Connecticut General Life Insurance Company. Now, I want a copy of that Order you all signed reflecting your agreement.

MS. DUGGER: It's a ...

MS. MAYFORTH: Your Honor, there are material...

MS. DUGGER: It's in the file, your Honor

MS. MAYFORTH: There are material facts in dispute.

THE COURT: Wait just a minute, lady

MS. MAYFORTH: I'm sorry.

THE COURT: You'll just have to take your time and you'll have to take, not interrupt people. There is an Order and there is a procedure we're going to follow here and I expect you to follow it, okay. Now...

MS.DUGGER: It's in the file somewhere, your honor.

THE COURT: Somewhere.

MS. DUGGER: In the two volume file.

THECOURT: There's two volumes or more here, so...

MS.DUGGER: It's attached to Mr. Keaton's Motion to enforce an agreement.

THE COURT: Okay.

MS.MAYFORTH: That was supposed to be heard next week, right, Ms. Dugger, and you're forcing me to defend that today?

MS. DUGGER: It was prior to Judge Stanley bifurcating the trial.

THE COURT: The Court grants the Motion of Connecticut Life Insurance Company to deposit the proceeds of the policy of insurance with the Registry of the Chancery Court of Carter County. It also enforces the Agreed Order entered in this Cause of Action when it was in Federal Court and all parties were represented by competent counsel that Connecticut General be permitted to deposit these proceeds in this Court and be dismissed from this lawsuit. That Motion is granted.

MS. MAYFORTH: Your Honor, I would like to appeal that decision on the basis that first of all it wasn't...

THE COURT: Yeah, wait, wait, stop,please, ma'am.

MS. MAYFORTH:. . .supposed to heard till next...

THE COURT: Please, ma'am, wait.

MS. MAYFORTH: I'm sorry.

THE COURT: You don't have to ask my permission to appeal. I don't have anything to do with it. When I make my decision the rest of it's up to you. You don't have to...

MS. MAYFORTH: I'm asking you to reconsider. I'm sorry.

THE COURT:You don't -- well, I decline. I've made my decision, thank you.

MS. DUGGER: Your Honor, with regard...

THE COURT: Wait just one minute,

MS. DUGGER: Sure.

THE COURT: Now, we have a Motion to Continue. We have a Motion for Summary Judgment by the Plaintiffs against the Defendants, Potts and Mayforth.

MS. DUGGER: Yes, your Honor, I have the...

MS.MAYFORTH: That's supposed to be heard next week though. That's -- and the one that you just....

DUGGER: I noticed in...

MS. MAYFORTH: ... judged on.

MS. DUGGER: If I may speak, your Honor.

THE COURT: Yes, you may. And again,please, ma'am, Ms. Mayforth...

MS MAYFORTH: I'm sorry.

THE COURT: . . .I don't want to find you in contempt of court and put you in jail. So please stop interrupting us and have a seat.

MS. MAYFORTH: Yes sir.

MS. DUGGER: I filed a notice to the Defendants that I would appear before this Court on November the 27th to hear the Motion for Summary Judgment.

THE COURT: Okay, that's fine. That's fine.

MS. DUGGER: And I would like to do that at that date.

THE COURT: Alright, that's fine.

THE COURT: What -- what -- stop. What motions are before me today? I understand that there are two. A Motion to Continue and the Motion by Connecticut General to enforce the Settlement Order to let them deposit the proceeds of the insurance policy into court and be dismissed from this lawsuit. Do I understand there's another motion filed where you're asking the Court to clarify whether or not Ms. Mayforth can represent Mr. Potts, her brother?

MS. DUGGER: That's my oral motion.

THE COURT: Okay. I'll let you respond to that motion. As I understand it...

MS. MAYFORTH: Is...

THE COURT: As I understand it you've already told me you don't represent him?

MS. MAYFORTH: No sir. Mr. Potts has filed a request for a jury trial, for both the contempt and the Motion for Sanctions that Ms. Dugger filed specifically against him and he would like for you to grant that jury trial. And if there is a question that you need to ....

THE COURT: I haven't gotten ...

MS. MAYFORTH: . . .how can he ask to be able to appear..

THE COURT: I have no idea about sanctions and contempt.

MS. MAYFORTH: That's what..

THE COURT: In response to the Plaintiff's Motion that -- for this Court to declare whether or not lay person Mary Potts Mayforth, Defendant, may represent her brother, lay person Gordon Ray Potts, Jr., the answer is no. The Court finds that certainly the constitution permits people to represent themselves. But a non-lawyer is not permitted to represent a lay person in this court. So your oral motion is granted. Mary Potts Mayforth layperson, non lawyer may not represent her brother, Gordon Ray Potts, Jr. Okay, now we've got that one straight. We've got two down here. Now, what's the other Motion that we have today?

MS. MAYFORTH: I would like to clarify that the ones that were -- the motions that were set for hearing today, your Honor, were the contempt and the sanctions against my brother. The other motions were supposed to be set for the 27th and this is premature.

THE COURT: Okay. So there's a motion for sanctions and contempt against Mr. Gordon Ray Potts, Jr. I will find those motions. Okay, now, Ms. Mayforth, as I understand it, he had filed a Motion for Sanctions.

MS. MAYFORTH: Yes sir.

THE COURT: And your brother, you and your brother, have filed, Mr. Gordon R. Potts, Jr., and his sister Mary Potts Mayforth, Mary Potts Mayforth being present

here in court today, have filed a pro se motion asking this Court for sanctions against the Plaintiff, Pearl Lynell Potts and Plaintiff's attorney, Kathrine Dugger, and for Summary Judgment in favor of the Defendants Mayforth and Potts in accordance with their argument. Now, that is for hearing today?

MS. MAYFORTH: We withdrew the Summary Judgment, your Honor, the request for Summary Judgment.

THE COURT: Let the Order reflect, Ms. Dugger, that the Motion for Summary Judgment filed by Defendants Mayforth and Potts against the Plaintiff Pearl M. Potts is withdrawn as of this date per Ms. Mayforth. Now, today is the Motion for Sanctions before the Court.

MS. MAYFORTH: Yes sir.

THE COURT: Okay, I'll hear what you have to say.

MS. MAYFORTH: Your Honor, this is a malicious prosecution case and we intend to file further sanctions upon retaining an attorney to do it for us due to the fact that the Complaints originally filed and all motions subsequent to that complaint filed by Ms. Dugger on behalf of Pearl Lynell Potts were malicious prosecution and that an evidentiary hearing tried before a jury will be able to show that the claims that she made in her Complaint were unfounded and that she did not make due diligence in investigating the claims before she filed them and that it has caused both financial and emotional distress to both of the Defendants.
THE COURT: Okay, anything else?

MS. MAYFORTH: No sir.

THE COURT: Alright. Ms. Dugger, do you have a response?

MS. DUGGER: Your Honor, I deny those allegations. I deny that it was malicious. Felt that it was a legal judicial cause of action that I filed.

THE COURT: The Court, after consideration of Defendant Potts and Mayforth's Motion for Sanctions in contempts against the Plaintiff and her attorney, Ms. Dugger, are respectfully denied. Okay, now what other matters are before the Court today? We still have the Motion for Continuance pending. What other matters are before the Court today for this Court to resolve?

MS. DUGGER: Your Honor, I have a Motion for Sanctions and Contempt against Gordon Potts, Jr.

THE COURT: Okay, hold on let me find it. Now, is this dealing with your Motion to Compel, is that right?

MS. DUGGER: Yes, Motion to Compel.

THE COURT: I saw that, I read that in here. Give me one second, I remember that. Since I'm dealing with voluminous files here, could you give me a idea of when you filed that Motion so I'll be able to perhaps find it in the file again?

MS. DUGGER: My Motion was filed August-- September 27th.

MS. MAYFORTH: Which one? You filed the two on two separate dates.

MS. DUGGER: Motion for Sanctions was filed September 27th. The Motion for Contempt was filed right before that, your Honor. That's part of my Exhibits to the Motion, your Honor.

THE COURT: Beg your pardon?

MS. DUGGER: You're looking at the Exhibits to my Motion.

THE COURT: I see a Motion for Sanctions filed September 27th. Hold on one second. I see a Motion for Sanctions. I do not see a separate Motion for Contempt.

MS. DUGGER: It was filed September 20th, right before the Motion for Sanctions.

THE COURT: Well, I'm back to July in the file, August, Scheduling Order in August. Motion for Sanctions on the 27th. I'll be glad to let you find it for me. Here is the Motion for Sanctions right here if that'll help you any. It was filed on September 27th.

MS. DUGGER: I'll adjust the Complaint, your Honor. This is a very complicated case. There's two volumes that was filed.

THE COURT: Yes, here's the other volume.

MS. DUGGER: I can't seem to find it either. We'll proceed with the Motion for Sanctions.

THE COURT: Okay.

MS. MAYFORTH: Would you dismiss the contempt one then, is that what you're doing?

THE COURT: Said she wants to delay the hearing on it. We'll hear the Motion for Sanctions.

MS. DUGGER: Motion for Sanctions, your Honor, in accordance with Tennessee Rules of Civil Procedure, 3702, we move for Motions for Sanctions against Defendant Gordon Potts, Jr., for failure to comply with the Order of the Court.Order of the Court on -- which was entered August 18th. Judge Stanley ordered "Defendant Gordon R. Potts is ordered to give Plaintiff's counsel access to his 1998 Federal Tax Return," which he failed to do within thirty days.

THE COURT: Has he done it at all ever?

MS. DUGGER: He...

MS. MAYFORTH: Yes, he gave her the W-2 it was an on-line...

THE COURT: Now, I'm not asking you yet, lady, and.....

MS. MAYFORTH: I'm sorry.

THE COURT: . . .you know, I'm not going to -- this makes about the fourth time I've asked you to...

MS. MAYFORTH: I'm sorry.

THE COURT: . . .zip your lips until it's your turn to talk.

MS. MAYFORTH: I thought you were asking me, I'm sorry.

THE COURT: The next time the bailiff is going to visit you. This is my final warning.

MS. MAYFORTH: Okay.

THE COURT: I'm going to give you an opportunity to talk all you want to talk, tell me everything you want to tell me, but you've got to wait your turn.

MS. MAYFORTH: Yes sir.

THE COURT: Go ahead.

MS. DUGGER: Your Honor, he did file his Federal Income Tax Return after the Motion was filed, this Motion was filed.

THE COURT: Okay.

MS. DUGGER: It was further ordered, Judge Stanley's Order, that Defendant Gordon Ray Potts, Jr., shall provide proof of when he made a request to his bank for his bank statements, either by letter or telephone call. He did not do that until this order or this Motion today was filed, the Motion for Sanctions. Defendant Gordon Ray Potts was given thirty days to produce his bank records and if Defendant fails to abide by this Order this Court will consider further sanctions or courses of action. Judge Stanley further ordered, "Defendant shall answer under oath whether he..."

THE COURT: So what you just now said was, you asked for banks statements he has not given you?

MS. DUGGER: Right.

THE COURT: Okay. So out of the three items you requested he's complied with two although he complied with them late?

MS. DUGGER: Correct.

THE COURT: And one he hasn't complied with at all?

MS. DUGGER: Correct.

THE COURT: And that was the bank statements. And that's pursuant to...

MS. DUGGER: Judge Stanley's Order of August 18th.

THE COURT: Okay, anything else?

MS. DUGGER: Yes, your Honor. When I didn't get the bank records, Judge Stanley ordered the bank, Northwest Bank and South Padre Island, those two banks to produce to me the bank records. And I did not get them from Defendant Gordon Potts, Jr., but I did receive them from the South Padre Bank. And they are attached as Exhibit to my Motion.

THE COURT: So although Mr. Potts didn't provide them the bank did?

MS. DUGGER: Yes, your Honor.

THE COURT: And you mentioned another bank there?

MS. DUGGER: Northwest Bank.

THE COURT: Well, what happened to the request for documentation from them?

MS. DUGGER: I got a telephone call last week and I have not received those bank statements; however, Mr. Potts did produce some of his Northwest Bank statements and he did produce some of his South Padre Island bank statements, but the key part to this lawsuit that I have filed a Complaint for, is that I have accused Defendant Potts and Mayforth of stealing their father's money. Under a new cause of action the legislature enacted TCA 71 6120, which gives a cause of action for an elderly person or disabled adult to recover for abuse, neglect, exploitation or theft. And I have filed in my

my
Complaint, I've accused them of theft.

THE COURT: While their father was alive?

MS. DUGGER: While he was alive, yes, your Honor. I accused them of theft, of stealing a $7300.00 check; of stealing a four thousand...

THE COURT: Okay. Yeah, I...

MS. DUGGER: . . .two hundred and twenty-seven dollar and 88 cents check of a ...

THE COURT: So how does all that relate, Ms. Dugger, to the sanctions you're asking this Court to impose on Potts and Mayforth? Or on Potts rather?

MS. DUGGER: My sanctions against Mr. Potts are for failing to supply those records.

THE COURT: Well, okay.

MS. DUGGER: Which he was ordered to do.

THE COURT: But all the records now have been supplied, right or wrong?

MS. DUGGER: Not by Mr. Potts, but in my own behalf, which cost me a $100.00 to do. I've also ordered or requested that he be held in contempt in his interrogatories. I submitted...

THE COURT: Now, wait, hold it, hold it. Is that part of the contempt we're not hearing today or...

MS. DUGGER: This is the sanctions, your Honor.

THE COURT: Sanctions, okay.

MS. DUGGER: He filed sworn answers, Defendant Potts did, to various written interrogatories I submitted back in December, which were finally answered on March 17th. And it's my position, your Honor, Mr. Potts lied with regard to those interrogatories. I've stated forth the questions, question 5 in the interrogatories, asked Mr. Potts what happened to the $22,700.00 that Gordon, Sr. withdrew from TI Federal Credit Union? He answered that he did not have knowledge or information of the amounts he withdrew or borrowed from TI Federal Credit Union; however he states that on or about July 5th, the deceased Gordon, Sr., gave him $20,000.00. When I received the South Padre Island Bank statements, it showed a deposit to Gordon R. Potts, Jr., account of $22,700.00 on July the 21st. And his taxpayer I.D. number was 267739169. The same taxpayer I.D. number which appears on his tax return, which he did file in this court and it's in the record. The same tax number and same address that Mr. Potts filed on his tax return.

THE COURT: What's your proof that this is the same money?

MS. DUGGER: My proof is I have the cancelled check, which I filed in this case, your Honor, it's stamped "South

"South Padre Bank, July 21, '99." The same day a deposit appears in the Defendant's bank account.

THE COURT: For the same amount?

MS. DUGGER: For the same amount. Also there's a $7,500.00 deposit to Mr. Potts' bank account on August 4th. I have a cancelled check made out to the deceased in the amount of $7,500.00. It is stamped by the South Padre Bank on August the 9th. Also there's a $4,227.88 check made out to the deceased, Gordon Potts from Aetna. When I asked Mr. Potts in Interrogatories what happened to that money he states that he did not have knowledge or information responsive to this request. But then when I received his bank statements, your Honor, on August the 9th, there was a deposit to his account of $4,227.88. I have the cancelled check here, your Honor, which is stamped by the South Padre Island Bank on August the 9th of $4,227.88. It's my position that Mr. Potts has been -- he's tried to deceive this money when I would request from his lawyer that he provide me these bank statements he would tell his lawyer that he didn't have an account. And as you'll see in the record they filed letters from their attorney...

when I received his bank statements, your Honor, on August the 9th, there was a deposit to his account of $4,227.88. I have the cancelled check here, your Honor, which is stamped by the South Padre Island Bank on August the 9th of $4,227.88. It's my position that Mr. Potts has been -- he's tried to deceive this money when I would request from his lawyer that he provide me these bank statements he would tell his lawyer that he didn't have an account. And as you'll see in the record they filed letters

from their attorney...

THE COURT: They who? What attorney?

MS. DUGGER: There's letters in the file from Tim McConnell to Gordon Potts, Jr. And in those letters, it's in the file there, your Honor, it states that numerous occasions, "Ms. Dugger is seeking all bank account statements from July, '99 to the present and any and all credit cards. She's got a motion pending, please supply these documents." Another letter, "In regard to Mr. Potts' account with South Padre Bank," as I mentioned previously this was a letter to me, which is in the record. "It is my understanding from conversations with Mr. Potts that his account was not opened until November, '99." In another letter from Tim McConnell to his client, a letter from Tim McConnell to Mr. Potts. "Dear Chip, in my telephone conversation with Ms. Dugger she informed me that various checks that were cashed and/or deposited by your father were done so at the South Padre Bank. She feels that bank statements from South Padre Bank might reflect any deposits of these checks which may have occurred. I told Ms. Dugger that you had informed me that you had not opened a bank account at the South Padre Bank until November, '99. If you do however have any records or statements reflecting checks cashed or deposited please forward these to me immediately. That was on July 7th. And on August 23rd a letter from Tim McConnell to Mr. Potts, "Enclosed is a copy of the Court's Order on Ms. Dugger's Motion to Compel Discovery." There's just numerous letters, at least six or seven here from Mr. McConnell to Gordon Potts, you know, please comply with the Order. Please produce your records. I had to get an Order of the Court to

make him produce his records and then when he didn't I had send the Order to the South Padre Bank. And then when I discovered his records, you know, he's lied about this whole thing, your Honor. He's had the money all along, but just wouldn't tell us. He's just been very deceptive. And our Motion for Sanctions, we're asking in accordance with Rules 3702 that -- we're asking for a default judgment in the amount of $35,927.88. The amount of the money that he deposited in his account. And we're relying on the case of Shadar v. Global Housing (spelled phonetically.)

THE COURT: Sheriff, would you pass that up?

MS. DUGGER: This is a case, your Honor, where the Court did find and grant a default judgment in favor of the Plaintiff against the Defendant. Default judgment was appropriate sanction for Defendant's failure to comply with discovery orders in an...

THE COURT: Of course, here the Defendant has not totally ignored the interrogatories. He answered interrogatories, you're just contending because of the documentation you subsequently received that he lied in his interrogatories, isn't that right?

MS. DUGGER: That's one aspect, yes, that he has lied and he failed to produce his bank records. And then when I did find his bank records I discovered that he lied in his interrogatories. And because of these failure to abide by the discovery requests, we feel that we're entitled to a default judgment.

THE COURT: Okay.

MS. DUGGER: We also feel that he shouldn't be allowed in the event you don't grant a default judgment, that he not be allowed to raise any issues in his defense regarding this.

THE COURT: Regarding this what?

MS. DUGGER: Regarding the money in his account and regarding these bank statements.

THE COURT: Okay. Now, as I understand it, Ms. Dugger, and reading the Motion you just now argued to the Court, that the Motion you just argued to the Court does not concern Mary Potts Mayforth.

MS. DUGGER: That's right, your Honor, it doesn't.

THE COURT: Okay. Well, and I've already found that Mary Potts Mayforth as a lay person cannot repre -- come into court as a lawyer and represent another lay person in this instant, Gordon Ray Potts, Jr. Gordon Ray Potts, Jr. chose not to attend today and this Court -- asked the Court to do this by telephone and the Court doesn't have the means to do that, so it couldn't and denied that Motion. There -- Mr. Potts not being here, the Court having found that his lay person sister could not represent him, the Court finds that Mr. Gordon Ray Potts, Jr., has embarked upon and engaged on a course of conduct that is designed to totally frustrate these procedures, not only the interrogatories, not only the oral in person discovery, not only the request for production, but this

file reflects that Mr. Gordon Ray Potts, Jr. has been on a course of obstructing justice of failing to timely answer interrogatories. That he has engaged in a course of conduct that is designed to totally frustrate this trial from going forward. This Court finds that Gordon Ray Potts, Jr., by the evidence presented today and no contrary evidence appearing has committed perjury, has lied under oath in his interrogatories about these various checks that were sent to his father, made payable to his father and which Mr. Gordon Ray Potts, Jr. is alleged of stealing and in fact, these checks about which Mr. Gordon Ray Potts, Jr. denied knowledge and so on, were in fact, in his possession and deposited into his account. This Court finds that Mr. Gordon Ray Potts, Jr.'s conduct is gross. It's not someone who doesn't know what they're doing. It's not someone who -- Mr. Gordon Ray Potts, Jr. is not a lost ball in high weeds. This record reflects that he is a sophisticated man. He's an educated man. This record reflects that he evidently has a responsible job and Mr. Potts is attempting to frustrate this Court at every point. Mr. Gordon Ray Potts has refused to abide by the former orders and decrees of this Court ordering him to supply information, ordering him to answer interrogatories, ordering him to comply with the various statutory and rule discovery requests. Now having said all of that, as T understand it, in spite of Gordon Ray Potts, Jr.'s conduct in using every means at his disposal to frustrate the trial of this cause arid the truthtul response to various discovery requests that the Plaintiffs went around Gordon Ray Potts, Jr., and got his banks to provide the necessary information with the exception off some bank statements. As I understand it you now have everything that you asked for with the exception of some bank statements, is that correct?

MS. DUGGER: I have qot everything pertinent to this lawsuit, your Honor.

THE COURT: Now, the issue is, you asked for A, B and C. Did you get A, B and C from any source?

MS. DUGGER: I got bank statements from South Padre Bank, yes THE COURT: Well, I'm simply asking you, now, please, Ms. Dugger, don't you start frustrating the procedure.

MS. DUGGER:Okay, I apologize, your Honor.

THE COURT: Listen to my question. Have you received all the information you requested from some source?

MS. DUGGER: Not all of it.

THE COURT: Okay, what have you not received? Tell me specifically?

MS. DUGGER: His bank statements from Northwest Bank.

THE COURT: From what date to what date?

MS. DUGGER: July 1,'99 to the present.

THE COURT: And when was that request made?

MS. DUGGER: It was made December the 19th, 1999

THE COURT: And the information that you have provided the Court into the file reflects that he did have a bank account

at this bank, is that Correct?

MS. DUGGER: I don't know...

THE COURT: How can I find him -- how can I find sanctions against him for not providing you information from a bank where you haven't shown that...

MS. DUGGER: You can't, your Honor, because I don't know.

THE COURT: Well...

MS. DUGGER: It's just part of discovery. I'm not interested in the Northwest Bank because the South Padre Bank has shown me all that I needed to know.

THE COURT: Okay. So what's left for this Court to decide?

MS. DUGGER: Your Honor, another issue I'd like the Court to address is the Motion for a jury trial.

THE COURT: Now, wait, stop. What happened to your Motion for Sanctions against this man? Are we just dropping that now having found that....

MS. DUGGER: Oh...
THE COURT: ... others provided the information that you requested from him? Are you just dropping that?

MS. DUGGER: No, your Honor, I thought you had just ruled on that.

THE COURT: Okay. Well, I haven't got a sanction against him and that's -- I'm trying to find out here ...

MS. DUGGER: I apologize, your Honor.

THE COURT:. . . the exact status of the matter before I place a sanction against him.

MS. DUGGER: I'm asking for sanctions against -- a default judgment, your Honor, against Gordon Potts, Jr. in the amount of $35,927.88 Those were the amounts deposited in his account. A $ .500.00 check, a $22,700.00 check, a $4,227.88 check and $1500.00. Those all total $35,927.88.

MS. MAYFORTH: On what grounds?

MS. DUGGER: Your Honor, these are the amounts I've sued for against Mr. Potts and Ms. Mayforth. I specifically asked for these amounts in my Complaint. And, of course, they answered denying it.

THE COURT: Motion granted. There is a-- as a result of the sanctions against Mr. Gordon Ray Potts, Jr. for his total effort and with success of frustrating discovery, with failure to follow these Court's orders, for obstructing justice, for his lying under oath, this Court awards a default judgment against Mr. Gordon Ray Potts, Jr. and for the Plaintiffs in the sum of $35,927.88.

MS. MAYFORTH: May I speak now, your Honor?

THE COURT: You may not represent your brother and none of this is against you.

MS. MAYFORTH: No sir, I'm not attempting to represent

my brother.

THE COURT: Okay. Now, wait just a minute. That concludes the Motion for Sanctions against Mr. Gordon Ray Potts, Jr., does it not? Before we go on to something else. I like to handle things one at a time.

MS. DUGGER: Your Honor, I'd like for reasonable expenses for a $100.00 against Mr. Potts for the money I had to expend to the South Padre Island Bank.

THE COURT: Okay. Do you have some kind of receipt or cancelled check or something you can show the Court?

MS. DUGGER: There's a letter, my Exhibit 1 to my Motion for Sanctions.

THE COURT: Plus $100.00.

MS. DUGGER: Charged me $100.00.

THE COURT: For the fee that counsel had to pay to get the information that Mr. Potts should have provided to begin with.

MS. DUGGER: And I'd like attorney's fees, your Honor.

THE COURT: What would be reasonable attorney's fees?

MS. DUGGER: The last time I was awarded $300.00 from Mr. Potts.

THE COURT: Well, of course, last time doesn't count. This is this time. I'm interested in knowing how long it took you to do this and how many hours and what your hourly rate is?

MS. DUGGER: My hourly rate is $125.00 an hour. It took me about five hours.

THE COURT: Six hundred and twenty-five ($625.00) dollars in attorney's fees are granted. Now, that concludes, does it not, the Plaintiff's Motion against Mr. Gordon Ray Potts, Jr. for sanctions?

MS. DUGGER: Yes, your Honor, it does.

THE COURT: Alright. Is there another motion pending today?

MS. MAYFORTH: I think just the one about the jury trial being postponed until the 2001 Docket.

THE COURT: Okay. Now wait. Okay.Right, we still have pending before the Court and I'm taking that under advisement right now, the Motion for Continuance of the November 29, 30 jury trial. Now, what do you -- you just now said there's some kind of motion for something else?

MS. DUGGER: Your Honor, I would like for you to address Ms. -- Mr. Potts himself filed a motion for jury trial on.

THE COURT: On the sanctions?

MS. DUGGER: On these sanctions?

THE COURT: Denied.

MS. DUGGER: Thank you.

THE COURT: He's not entitled to a jury trial on his Motion for Sanctions.

MS. DUGGER: Thank you, your Honor. That concludes my motions, your Honor, unless Ms. Mayforth has anything or Mr. Keaton.

THE COURT: Yes ma'am.

MS. MAYFORTH: I just have a statement for the record, your Honor, and that's that Mr. Potts attempted to present evidence in his defense on the judgment you just gave him and you told me to sit down and shut up and that we couldn't present evidence the last time we were here. So he did make an attempt to represent himself and his objections are in this.

THE COURT: No ma'am, I've never told you to shut up.

MS. MAYFORTH: I'm sorry.

THE COURT: Told you to sit down and be quiet and not interrupt, but no ma'am, I've never told you to shut up.

MS. MAYFORTH: Then I misinterpreted your Honor, I apologize for that, but we -- we do contend that since the amounts that Ms. Dugger has just had you award to the Court, consist of monies that were granted to both me and my brother from my father for our educational funds and it's not appropriate to sanction....

THE COURT: Of course, it doesn't is concern you, none of that concerns you.

MS. MAYFORTH: It was partially my money, your Honor.

THE COURT: Well, okay.

MS. MAYFORTH: That's all I have to say.

THE COURT: What else?

MS. MAYFORTH: That's all I have to say.

THE COURT: Okay, anything else? Alright, fine. Would you draw the Order, please? Thank you. I don't see any reason to continue this case. Why should I continue it? Somebody stand up and give me a good reason why I should continue this case?

MS. DUGGER: Your Honor, one reason. Last October the 9th you granted them thirty days in which to get an attorney. I had a deposition set on the 30th of November. I didn't want to appear to be overreaching the Defendants and [illegible] going for a deposition when they didn't have counsel at the time, so I cancelled it.

THE COURT: It's not your fault they don't have counsel.

MS. DUGGER: I know it's not, your Honor, but I cancelled the deposition and I cannot reschedule it before trial. I cancelled it because I wanted to give them an opportunity to hire an attorney and that opportunity would not have expired. And I didn't want them to hold that over my head as they are holding everything else, your Honor. That was the reason for cancelling the deposition.

THE COURT: That was rather presumptions, wasn't it? Did you just assume this Court was going to automatically grant you a continuance?

MS. DUGGER: No, your Honor.

THE COURT: Now, let me tell you something, ladies...

MS. DUGGER: I can be ready for trial.

THE COURT: This matter has been on the docket forever and when it got to one and a half volumes, this Court called a stop to the proceedings because the parties, vis—a--vis their attorneys, were spinning their wheels and arguing and not making progress toward trial. So on May 15, 2000 we, this Court, I put down a Scheduling Order and this trial back in

May was scheduled for November 29 and 30. This Court knows of no reason why this case should not go forward. The longer it lingers the worse it gets. This Court has not been presented any good reason for this case to be continued; therefore, the Motion for a Continuance for Trial for November 29th and 30th is denied.

MS. MAYFORTH: Are we still having something on the 27th then if we're going to be in here on the 29th and 30th, your Honor?

THE COURT: I don't know, have you scheduled something for the 27th?

MS.MAYFORTH: I believe someone did. I didn't.

MS.DUGGER: Your Honor, I filed a Motion for Summary Judgment. I think that would be dispositive of the whole case.

THECOURT: Okay, it looks like she's giving you -- have you given Ms. Mayforth notice of the...

MS.DUGGER: Yes, I have, and Mr. Potts.

THECOURT: Looks like on -- well, he's out, I think.

MS. DUGGER: This is in regard to the insurance proceeds.

THE COURT: Oh, okay, in regard to the insurance proceeds. Alright, it appears that on November 27th we've got a Motion for Summary Judgment.

MS. MAYFORTH: But, your Honor, the--an order that -- there's a Scheduling Order that Ms. Dugger actually drafted and everyone agreed to says that you're not supposed to hear

any Motion for Summary Judgments within that many days of the trial.

THE COURT: Well, then I won't. Let's just look at it. If he's not timely she's....

MS. MAYFORTH: Do you need a date or something, would it help you?

THE COURT: She's missed it.

MS. DUGGER: I can hear the Motion today, your Honor.

THE COURT: Well, did you give them notice that you're going to hear the Motion today?

MS. DUGGER: No, I did not.

THE COURT: Well, I'm not going to let you hear a motion unless you give them appropriate notice. I'm not going to let you come in here and fuss at them for not going to these deadlines when you yourself have evidently failed in a deadline to schedule. "Parties shall file any other motions excluding Motions in Limine on or before fifteen days before trial. The deadline for hearing motions shall be on or before ten days before trial." If the trial is the 29th the deadline for hearing motions is the 19th. So we will not hear any motions on the 27th.

MS. DUGGER: Your Honor, can I get a special setting to hear my Motion for Summary Judgment?

THE COURT: I don't know.

MS. MAYFORTH: I object to that, your Honor, if I can. I don't know if I'm supposed to. I'm sorry.

THE COURT: Thank you very much. Draw the Order.

THAT CONCLUDES THIS HEARING ON MOTIONS AS HAD THE 13TH DAY OF NOVEMBER, 2000.

APPENDIX H

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts Sr., Deceased
Plaintiff

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR.and
CONNECTICUT GENERAL LIFE
INSURANCE COMPANY
Defendants

ORDER

This cause came on to be heard before the Honorable Jean Stanley, Circuit Court Judge sitting by interchange in the Chancery Court, upon the Motion to Compel Defendant Gordon Ray Potts Jr. to produce certain documents, the oral arguments of counsel whereupon the Court Orders the following:

Defendant Gordon Ray Potts Jr. is Ordered to give Plaintiffs counsel access to his 1998 his. Federal income tax return. Plaintiff's counsel is instructed to not make copies of the Defendant's tax return, and to not give copies to Plaintiff and Plaintiffs counsel are instructed and ordered to not discuss Defendant's tax return with anyone.

IT IS FURTHER ORDERED that Defendant Gordon Ray Potts Jr. shall provide proof of when he made a request to his bank for his bank statements either by letter or telephone call. Defendant Gordon Ray Potts Jr. is hereby given 30 days to

produce his bank records and if Defendant fails to abide by this Order this Court will consider further sanctions or courses of action.

IT IS FURTHER ORDERED that Defendant shall answer under oath whether he did or did not have a credit card prior to December 1999.

IT IS FURTHER ORDERED that Norwest Bank Texas NA, its successors and assigns located at South Padre Island Office, 550 Padre Blvd. South Padre Island, TX 78597 shall produce to the Plaintiff's counsel, Kathryn J. Dugger, Dugger & Cole Attorney the bank account records for Gordon Ray Potts, Jr., Social Security Number 267-73-9169 from July 1, 1999 to the present.

IT IS FURTHER ORDERED that Defendant Gordon Ray Potts, Jr. shall pay attorneys fees to Plaintiff's attorney Kathryn J. Dugger in the amount of $300.00 within 60 days. Costs of this motion are hereby taxed to Defendant Gordon Ray Potts Jr.

"S/ Jean Stanley"
Circuit Court Judge

Approved:
"S/Kathyrn J. Dugger"
Kathyrn J. Dugger BPR#012964
Dugger & Cole
615 Elk Avenue
Elizabethton, TN 37643
(423) 542-4183

"s/Tim McConnell"
Tim McConnell BPR#19136
Wilson, Worley & Gamble, PC
4th Floor- Sullivan County Bank Building
110 East Center Street
P.O. Box 10007
Kingsport, Tennessee 37662-1007
(423) 246-8181

*Appellant's note- this Order is Undated.

APPENDIX I-1

IN THE CHANCERY COURTFOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually And Executor of the Estate of Gordon Ray Potts Sr., Deceased
Plaintiff

FILED THIS 1ST DAY OF SEPT. 1999
AT 2.00 O'CLOCK A.M.
CHARLOTTE MCKEEHAN
CLERK AND MASTER

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and GORDON RAY POTTS JR.and CONNECTICUT GENERAL LIFE INSURANCE COMPANY
Defendants

COMPLAINT

Now comes the Plaintiff, Pearl Lynell Potts, by and through counsel, and for her cause of action states as follows:

1. Plaintiff is and was at all times hereinafter mentioned a resident of the City of Elizabethton, Tennessee. Plaintiff was appointed Executrix of the Estate of Gordon Ray Potts Sr. by Order of the Chancery Court, Probate Division for Carter County, Tennessee.

2. Defendant, Mary Potts Mayforth is a citizen and resident of the State of Maryland, whose address is 4012 Spurell Drive, Kensington, Maryland 20895 and Defendant, Gordon Ray Potts Jr., is a citizen and resident of the state of

Texas whose address is CL2 Box 55, South Padre Island, Texas 78597 (hereinafter called Defendants). Defendant Cigna Universal Life Insurance Company is a foreign corporation and is licensed to do business in the State of Tennessee with principa.l place of: business do Connecticut General Life Insurance, P.O. Box 20170, Lehigh Valley, PA 18001-0170.

3. Plaintiff and the decedent Gordon Ray Potts Sr. were married on January 13, 1978 and have lived together as husband and wife at their residence in Carter County, Tennessee.

4. On the morning of July 6, 1999 the Plaintiff awoke and made a pot of coffee and she went back to bed. That morning Mr. Potts went to the doctor and returned home, when plaintiff heard her husband whistle for their two dogs and heard him get into his truck and leave. The Plaintiff did not hear from her husband for several hours when she became worried and went looking for him. When Plaintiff could not find him she called the Carter County Sheriffs Department and reported her husband missing. Later that night she got in touch with some of his children and determined that he was alive and well, but his children would not tell her where he was. The Plaintiff later determined that her husband met his daughter, Mary Potts Mayforth at a park lb Elizabethton, Tennessee and she took him to Maryland. The Plaintiff had fallen the day before injuring her leg and breaking her fingers. Plaintiff was in no shape to leave the house and travel across the country to find her husband. Her only communications with her husband was by telephone, but Defendant Mary Mayforth took out a telephone harassment warrant against Plaintiff prohibiting her from calling her husband at Mary's house. On August 19, 1999 Plaintiff learned that her husband had died in a hotel room in San Marcos, Texas while with the Defendant Mary Mayforth.

5. Plaintiff avers that her husband Gordon Ray Potts Sr. was suffering from dementia had heart disease and was a diabetic. Plaintiff avers that her husband had left some of his medicine. Plaintiff avers that Defendants did not know how to care for their father. Plaintiff avers that he did not know who was the President of the United States and he would lose his directions and he had lost his ability to fix things. Plaintiff avers that her husband was incapable of making decisions on his own and that he lacked mental capacity to enter into contracts.

6. Defendant Cigna Universal Life Insurance Company issued a policy of life insurance on the life of Gordon Ray Potts Sr., Certificate Number 020972428 a value of $104,000.00. Plaintiff was the beneficiary under that policy until sometime after July 6, 1999 when the beneficiary was changed to Defendant, Mary Potts Mayforth. Plaintiff avers that her husband lacked mental capacity to change the beneficiary on his Life Insurance Policy and that the Defendants by fraud, duress, or undue influence caused the deceased to sign a paper writing for the purpose of changing the beneficiary on the Cigna Universal Life Policy. Plaintiff avers that she is entitled to the death benefits of this policy as beneficiary. Plaintiff further avers that Defendants would lock the deceased out of his hotel room in the hot Texas sun and would not let him in his room until he cooperated with Defendants.

7. Plaintiff avers that Defendants Mary Potts Mayforth and Gordon Potts Jr. are holding assets of the Estate of Gordon Ray Potts Sr. that are needed for Administration. Defendants have in their possession a 1989 Ford FT truck with doozy camper-TN license tag, Vehicle Identification Number IFTEXl5HlKK8O6986, a Rolex watch, a hearing aid, camping equipment and fishing equipment. Defendants also have in their possession two dogs, which belonged to

Plaintiff and Defendant named Jocy and Bandit.

8. Plaintiff avers that Defendants Mary Potts Mayforth and Gordon Potts Jr. are holding money belonging to the Estate of Gordon Ray Potts Sr., which is needed for Administration. The deceased withdrew $25,000.00 from a joint savings account with his wife at TI Federal Credit Union and took this money to Texas. Plaintiff avers that her husband lacked the mental capacity to withdraw this money from their joint savings account. Plaintiff avers that she was a joint owner of this account with right of survivorship and is entitled to this money. Defendants Mary Potts Mayforth and Gordon Potts Jr. have this money and have refused to turn it over to Plaintiff. Alternatively, Plaintiff avers that this is a fraudulent conveyance, with the intent to defeat the surviving spouse of her distributive or elective share in accordance with Tennessee Code Annotated

9. Plaintiff avers that her husband lacked mental capacity to cash in his Life Insurance policy with Aetna Life Insurance Company. Plaintiff avers that the Defendants by fraud, duress, or undue influence caused the deceased to sign a paper writing for the urpose of cashing in the deceased's life insurance policy with Aetna Life Insurance Company, Policy Nui~er N 3 847 289, which policy insured th~ life of Gordon Ray Potts Sr. in the sum of $50,000.00 and naming Plaintiff as beneficiary. Plaintiff avers hat Defendants are holding the cash value of this policy which money is an asset belonging to the Estate of Gordon Ray Potts Sr. Plaintiff avers that this is a fraudulent conveyance, with the intent to defeat the surviving spouse of her distributive or elective share in accordance with Tennessee Code Annotated ~3 1-1-105.

Wherefore, Plaintiff prays for judgment against the defendants as follows:

1. Defendant Cigna Universal Life Insurance interplead and deposit with the Clerk of the Court the death benefits under the life policy and this Court determine the lawful beneficiary of said policy.

2. This court find that Pearl Lynell Potts is the lawful beneficiary of the Cigna Universal Life policy and award to her the death benefits.

3. Plaintiff recover from Defendants the sum of $25,000.00 money belonging to the Estate of Gordon Ray Potts Sr.

4. Plaintiff recover from Defendant the cash value of the Aetna Life Insurance Policy.

5. That Defendants turn over to Plaintiff the Rolex watch, hearing aid, the 1989 Ford truck, camping equipment and fishing equipment, the two dogs Jocy and Bandit or Plaintiff have Judgment against Defendant for the value of these items not to exceed$50,000.00.

6. A jury to try the issues.

7. All other relief to which the plaintiff may be justly and properly entitled.

PEARL LYNELL POTTS
BY: "s/ Kathryn Dugger"
Her Attorney

Kathyrn J. Dugger BPR#012964
Dugger & Cole
615 Elk Aveenue
Elizabethton, TN 37643
(423) 542-4183
Attorney for Plaintiff

COST BOND
We acknowledge ourselves surety for cost in an amount not to exceed $500.00

By: Dugger & Cole
"s/Kathryn Dugger"
Kathryn J. Dugger

APPENDIX I-2

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS,
individually
And Executor of the Estate of
Gordon Ray Potts, Sr., Deceased
Plaintiff

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR. and
Connecticut General Life
InsuranceCompany
Defendants

And
Connecticut General Life Insurance
Company

vs.

Alice Elizabeth Nelson

MOTION FOR SANCTIONS

Comes the Plaintiff and hereby moves the Court pursuant to Tennessee Rules of Civil Procedure Rule 37.02 for sanctions against the Defendant Gordon Potts, Jr. for failure to comply with the Order of this Court:

1. The Plaintiff filed interrogatories and request to produce documents to theDefendant Gordon Potts, Jr.

When Defendant failed to adequately respond, Plaintiff filed a motion to compel discovery for Defendant Potts to produce his bank statements. Judge Stanley ordered Defendant Gordon Potts Jr. to turn over his bank records and imposed sanctions against Defendant Gordon Potts. Judge Stanley further ordered the South Padre Island in Texas to furnish the bank records of Defendant Gordon Potts, Jr. (These records have been furnished to the Plaintiff's attorney, See Exhibit 1). After this Order, the Defendant, Gordon Ray Potts, Jr. did furnish some of his bank records but has failed and refused to furnish us the records at the South Padre Bank for the records in question.

2. Defendant filed sworn answers to various written interrogatories with this Court on March 17, 2000. Plaintiff discovered after examining the South Padre Bank records that Defendant has lied when he answered the interrogatories regarding questions about his father's money. These four questions and answers to interrogatories are set forth below and compared with the South Padre Bank records as follows:

a. Question 5 of the Interrogatories asked Defendant Potts what happened to the $22,700.00 that Gordon R. Potts Sr. withdrew from the TI Federal Credit Union on 7-02-99? Defendant's answer stated that he "does not have knowledge or information of amounts that Gordon R. Potts, Sr. withdrew or borrowed from the TI Federal Credit Union on July 2, 1999; however, Defendant states that on or about July 5, 1999, the deceased, Gordon R. Potts, Sr. gave Defendant Gordon R. Potts, Jr. $20,000.00." The South Padre Bank statement shows a deposit of $22,700.00 on 7-21-99 to the account of Gordon Potts, Jr. (See Exhibit 1) The $22,700.00 cancelled check drawn on TI Federal Credit Union was stamped by the South Padre Bank on 7-21-99. (See Exhibit 2).

This was the same $22,700.00 that the deceased, Gordon R. Potts Sr. withdrew from TI Federal Credit Union in Johnson City, TN on 07-02-99. (See Exhibit 3 & 4)

b. Question 21 of the interrogatories asked Defendant Potts, what happened to the $4,227.88 that the deceased Gordon Ray Potts, Sr. received from Aetna. Defendant Potts answered that "he did not have knowledge or information responsive to this request." The South Padre Bank statement shows a deposit to Defendant's account on 08-09-99 in the amount of $4,227.88. (See Exhibit 1) The South Padre Bank stamped the $4,227.88 cancelled check from Aetna on August 9, 1999. (See Exhibit 5) Defendant Potts has lied to this court regarding this money.

c. Question 22 asked Defendant Potts, what happened to the $7,500OO I it Gordon R. Potts, Sr. borrowed from the TI Federal Credit Union on July 2, 1999? Defendant answered:

> "Plaintiff is referred to Defendant's response to No. 5 of these interrogatories"

The South Padre Bank Statement shows a deposit to Defendants account on 08-04-99 in the amount of $7,500.00. (See Exhibit 1) The $7,500 cancelled check drawn on TI Federal Credit Union was stamped by the South Padre Bank on August 4, 1999. (See Exhibit 6). Exhibit 6). This was the same money that Gordon Potts borrowed from the TI Federal Credit Union on 07-02-99. (See Exhibit 7)

d. Question 6 asked Defendant Potts what happened to the $2,000.00 check his father received from TI Federal

Credit Union. His answer stated

> "Plaintiff is referred to Defendant's response to No. 5 of these interrogatories"

The South Padre Bank statement shows a deposit of only $1,500.00 on 07-16-99 the same day the $2,000.00 check drawn on TI Federal Credit Union was stamped by the South Padre Bank on July 16, 1999. (See Exhibit 8). The South Padre Bank has informed Plaintiff that her husband, the deceased Gordon Ray Potts, Sr. did not have a bank account at the South Padre Bank. (See Exhibit 9)

3. Plaintiff avers that Defendant has failed to produce these bank records at the South Padre Island Bank because the statements show the Defendant Potts deposited his father's money. Plaintiff avers that Defendant has lied to this Court when he answered the interrogatories, questions 5, 6, 21 and 22.

4. Plaintiff avers that she is entitled to a default judgment against Defendant Gordon Potts Jr. in accordance with Rule 37.02 C and in accordance with Shadrdar v. Global Housing, Inc., 983 S.W.2d 230 (Ct of Appeals 1998).

WHEREFORE, Plaintiff seeks the following in accordance with Tennessee Rules of Civil Procedure Rule 37.02:

1. An order that the matters regarding the order to compel discovery or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the Plaintiff obtaining the order and a finding by this Court that Defendant Gordon Ray Potts, Jr. took his father's money; and/or

2. An order refusing to allow the disobedient party, the Defendant Gordon Potts, Jr. to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

3. An order striking out pleadings or Darts thereof, or rendering a judgment by default against the Defendant Gordon Potts, Jr.

4. In lieu of any of the foregoing orders or in addition thereto, an order treating
as a contempt of court the failure to obey any orders; and/or

5. Require the Defendant Gordon Ray Potts, Jr. to pay Plaintiff the reasonable expenses, including attorney's fees caused by the failure to supply his South Padre Bank statements.

6. General and equitable relief.

PEARL LYNELL POTTS

BY: "s/Kathryn Dugger"
Her Attorney

KATHRYN J. DUGGER TN BPR NO. 12964
Dugger & Cole
Attorneys at Law
615 Elk Avenue
Elizabethton, TN 37643
(423) 542-4183
Attorney for Plaintiff

NOTICE

Please take notice that I, Kathryn J. Dugger, will appear before the Honorable Richard Johnson, Chancellor, on the 9th day of October 2000, at 10:30 a.m. after the docket sounding in the Chancery Courtroom, Elizabethton, Tennessee and present the above Motion. This 27th day of September 2000

"s/Kathryn Dugger"
Kathryn J. Dugger

CERTIFICATE OF SERVICE

I, Kathryn J. Dugger, hereby certify that a true and exact copy of the foregoing Motion for Sanctions has been forwarded by first class U.S. Mail, postage prepaid to Defendant Gordon R. Potts attorney, Timothy B. McConnell, Wilson, Worley and Gamble, Attorneys at law, 110 East Center Street, 4th Floor. P.O. Box 1007, Kingsport. Tennessee 37662-1007, and attorney Reggie E. Keaton, Franz, McConnell & Seymour, LLP, P.O. Box 39, Knoxville, TN 37901on this the 27th day of September, 2000.

"s/Kathryn Dugger"
Kathryn J. Dugger

APPENDIX I-3

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts, Sr., Deceased
Plaintiff

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and
GORDON RAY POTTS JR.and
CONNECTICUT GENERAL LIFE
INSURANCE COMPANY
Defendants

MOTION FOR CONTEMPT

Comes the Plaintiff and hereby moves the Court to find Gordon Ray Potts Jr. in contempt of court based upon the following:

1. By Order of this Court entered on August 18, 2000, Gordon Ray Potts Jr. was ordered to "provide proof of when he made a request to his ban k for his bank statements either by letter or telephone call." Plaintiff avers that the Defendant has failed to do so.

2. The above Order further gave Defendant Gordon Ray Potts "30 days to produce his bank records and if Defendant fails to abide by this Order this Court will consider further sanctions or courses of action." Plaintiff avers that Defendant has failed to abide by this Order.

3. The above Order also Ordered Defendant "to answer under oath whether he did of did not have a credit card prior to December 1999." Plaintiff avers that Defendant has failed to do this,

WHEREFORE, Plaintiff seeks the following:

1. This Court hold Gordon Ray Potts Jr. in contempt of Court for failing to abide by the Order and impose sanctions against Defendant Gordon R. Potts Jr.,

2. This Court order Defendant Gordon R. Potts Jr. to pay to Plaintiff reasonable expenses including attorney fees and court cost regarding this contempt.

3. General and equitable relief.

PEARL LYNELL POTTS
By: "s/Kathryn Dugger"
Her A ttorney

KATHRYN J. DUGGER
TN BPR NO. 12964
Dugger & Cole
Attorneys at Law
615 Elk Avenue
Elizabethton, TN 37643
(423) *542-4183*
Attorney for Plaintiff

NOTICE

Please take notice that I, Kathryn J. Dugger, will appear before the Honorable Richard Johnson, Chancellor, on the 9TH day of October 2000, at 10:30 am. after the docket sounding in the Chancery Courtroom, Elizabethton, Tennessee and present the above Motion.

This the 20TH day of September 2000.
"s/Kathryn Dugger"
Kathryn J. Dugger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND EXACT COPY OF THE PLEADING OR PAPER TO WHICH THIS CERTIFICATE IS AFFIXED WAS THE DAY SERVED UPON ALL PARTIES OR THEIR ATTORNEYS OF RECORD IN THE MANNER PRESCRIBED BY THE METHOD CHECKED: ( ) delivery (x) Mail
THIS 20TH DAY OF SEPTEMBER, 2000

"s/Kathryn Dugger"
Kathryn J. Dugger

APPENDIX I-4

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts, Sr., Deceased,
Plaintiff

vs. Civil Action No. 24432

MARY POTTS MAYFORTH and GORDON RAY POTTS
JR. and Connecticut General Life Insurance Company,
Defendants

and

Connecticut General Life Insurance
Company

vs.

Alice Elizabeth Nelson

MOTION FOR PROTECTIVE ORDER

Comes the Plaintiff and hereby moves the Court for a protective order in accordance with Tennessee Rules of Civil Procedure Rule 26.03 and would allege the following:

1. Attached is a request by Defendant Mary Potts Mayforth to schedule the deposition of Plaintiff Pearl Lynell Potts. The Letter states that Ms. Mayforth would be recording the deposition on a separate machine. Plaintiff avers that this

violates Tennessee Rules of Civil Procedure Rule 28.

2. The Letter attached makes allegations against myself that I have used interrogatories and discovery not for "information gathering, but as a "tool to charge the defendant with perjury". Defendant Mary Mayforth goes on to say "This is a deliberate attempt to undermine due process and to undermine the powers of the Federal Court." Defendant Mary Potts Mayforth goes on to say "it was this goal that you had in mind to persecute Chip" "The intent of your request is obviously to use information that you knew the defendant did not have as entrapment."

3. Mary Potts Mayforth has on October 12, 2000 filed with the United States District court for the Eastern District of Tennessee a request that "this Court admonish the behavior of Kathryn Dugger, attorney for the Plaintiff and order that she cease and desist any further persecution of the defendants".

4. Plaintiff also points out to the Court that Mary Potts Mayforth states in her fax transmission that she is "representing (Chip and myself and further fax transmissions from Mary Mayforth state that "you must communicate with me as Attorney for the Defendants, Mary Potts Mayforth and Gordon R. Potts Jr."

5. Plaintiff seeks from this Court a protective Order regarding discovery to protect Pearl Lynell Potts and her attorney from annoyance, embarrassment, oppression and undue burdens and expenses.

6. Defendant Mary Mayforth has filed interrogatories and request for production of documents and ask that they be answered immediately. Plaintiff avers that a majority of these questions are not relevant to the subject matter in these

proceedings and have only been filed to harass and annoy the Plaintiff. Plaintiff moves for additional time in which to respond and an order from the court regarding which questions to answer.

7. Plaintiff seeks a Protective Order in accordance with Tennessee Rules of Civil Procedure Rule 26.03.

WHEREFORE, Plaintiff seeks the following:

1. A protective Order in accordance with Tennessee Rules of Civil Procedure 26.03.

2. Plaintiff request additional time in which to answer interrogatories and request for production of documents.

3. General and equitable relief.

PEARL LYNELL POTTS

By: "s/Kathryn Dugger"
Her Attorney

NOTICE

Please take notice that I, Kathryn J. Dugger will appear before the Honorable Richard Johnson, Chancellor, on the 27th day of November 2000 at 11:00 AM in the Chancery Courtroom, Elizabethton, Tennessee and present the above Motion.
This the ___6th___ day of November 2000.

"s/Kathryn Dugger"
Kathryn J. Dugger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND EXACT COPY OF THE PLEADING OR PAPER TO WHICH THIS CERTIFICATE IS AFFIXED WAS THE DAY SERVED UPON ALL PARTIES OR THEIR ATTORNEYS OF RECORD IN THE MANNER PRESCRIBED BY THE METHOD CHECKED: ( ) delivery (x) Mail

THIS 6TH DAY OF NOV, 20 00

"s/Kathryn Dugger"
Kathryn J. Dugger

APPENDIX I-5

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS, individually
And Executor of the Estate of
Gordon Ray Potts, Sr., Deceased
Plaintiff

vs. CIVIL ACTION NO. 24432

MARY POTTS MAYFORTH and GORDON RAY POTTS JR. and CONNECTICUT GENERAL LIFE INSURANCE COMPANY
Defendants

FILED THIS 7thDAY OF
April 2000 At 11:30 O'CLOCKA.M
CHARLOTTE MCKEEHAN
CLERK AND MASTER

MOTION FOR SUMMARY JUDGMENT

Comes the Plaintiff, Pearl Lynell Potts Individually, by and through her attorney, Kathryn J. Dugger, and hereby moves for Summary Judgment as to the claim for insurance proceeds under a contract of Life Insurance issued by Defendant Connecticut General Life Insurance Company, hereinafter referred to as Company.

FACTS NOT IN DISPUTE

The following facts are undisputed:

On October 9, 1995 the deceased Gordon Potts named his wife as the primary Beneficiary on all plans of benefits with Siemens. See Beneficiary Designation Form Exhibit "C"

attached to responses of Connecticut General Life Insurance Company to Request for Production of Documents. On July 23,1999 the Company received a Request for Change of Beneficiary Form (Exhibit "D" attached to responses of Connecticut General Life Insurance Company to Request for Production of Documents) on the policy of Gordon Potts Certificate No 02-0972428. Part of the form was typed written and part of the form was handwritten.

On page 46 of the Group Universal Life Certificate of Insurance handbook (Exhibit "A" attached to responses of Connecticut General Life Insurance Company to Request for Production of Documents) the Company sets forth requirements for an effective change of beneficiary and which states:

"**Change of Beneficiary**

Each owner may change the Beneficiary at any time, unless the Beneficiary designation is irrevocable. The change must be made on a form satisfactory to CG and signed by the owner. No change in Beneficiary will take effect until; this form is received by CG. When this form is received, the change will take effect as of the date of the form. If the Insured dies before the form is received, CG will not be liable for any payment that was made before recipt of the form."

The Change of Beneficiary form does not bear a signature of Gordon Potts and it does not bear a date nor does it indicate the marital status of Gordon Potts and also does not show the telephone number of Gordon Potts.

STATEMENT OF LAW

"By virtue f its court decisions, Tennesse has cast its lot as a "substantial compliance" state as regards the issue of a change of beneficiary of an insurance policy. Sun Life Assurance Co. of Canada v. Hicks, 844 S.W. 2d 652 (Tenn

Ct, App., 1992). "In order to effectuate a change of beneficiary (1) The mode prescribed by the policy must be followed". See Cronbach v Aetna Life Ins. Co., 153 Tenn. 362, 284 S.W. 72, 26 Thompson 362 (Tenn., May 22, 1926). The Cronbach court, quoting 37 Corpus Juris § 350 with approval, stated in pertinent part the law in this regard as follows:

"A mere unexecuted intention to change the beneficiary is not sufficient on the principle that equity regards as done that which ought to be done, the courts will give effect to the intention of insured by holding that the change of beneficiary has been accomplished where he has done all that he could to comply with the provisions of the policy, as where he sent a proper written notice or request to the home office of the company but was unable to send the policy by reason of circumstances beyond his control, as where it has been lost, or was in the possession of another person who refused to surrender it or was otherwise inaccessible, or where he sent both the policy and a proper written notice or request and all that remained to be done were certain formal and ministerial acts on the part of the company, such as in indorsement of the change of the policy, and these acts were either not done at all or were done after the death of the insured. Of course the rule is not applicable where insured has not done all tat he reasonably could to meet the conditions of the policy".

"mere intention to make the change will not suffice." National Life & Accident Ins. Co. v. Bryant, 27 Tenn. App. 294, 179 S.W. 2d 937, (Tenn. Ct. App., Nov 13, 1943, Holmes v. Gooch & Metropolitan Life Insurance Company, 3 Tenn. App. 80, 1926 WL 2025 (Tenn. Ct. App. Jan 15, 1926), Davis v. Davis, 136 Tenn. 520, 190 S.W. 459, 9 Thompson 520 (Tenn., 1916). See Sun Life Assurance Co. of Canada v. Hicks, 844 S.W. 2d 652, (Tenn. Ct. App.,

1992) wherein the Court said "In order for a finding of substantial compliance to be upheld, it must be determined from the record that Hicks took all the reasonable steps possible to meet the conditions imposed by the policy." The Court held that the insured did not substantially comply with the requirements for changing the designated beneficiary as set forth by the insurance company by filling out an employer's survey form indicating the beneficiary of life policy was the mother and therefore (the Court) awarded proceeds of the policy to his wife.

See also Aetna Life Ins. Co. v. Hayes, 324 F. 2d 759 (6th Cir. (Tenn.) Nov 19, 1963), wherein the "change of beneficiary form, unsigned, was found by his widow in the insured dresser drawer." The Court held an unexpected form does not meet the requirements of the substantial compliance rule. The Court in Aetna applied the law of Arkansas, which like Tennessee uses the substantial compliance doctrine. The Aetna Court went on to say that the "substantial compliance doctrine is based upon the fact that the insured has done everything reasonably possible for him to do. If the insured has not done all that it was reasonably possible for him to do, the law of Arkansas does not recognize a contemplated change of beneficiary which is still unexecuted at the time of the insured's death."

PLAINTIFF'S ARGUMENT

Plaintiff avers that the change of beneficiary form submitted to Connecticut General Life Insurance Company does not meet the company requirements as set forth in tye Group Universal Life Certificate of Insurance booklet as it (1) is not signed by the Owner, Gordon Potts, and is not dated. Plaintiff further avers that by not signing the form the deceased did not substantially comply with the provisions of the policy. Wherefore, Plaintiff avers that she is the beneficiary under the policy and entitled to the policy

proceeds.

THE CHANGE OF BENEFICIARY FORM IS NOT VALID AS IT WAS NOT SIGNED NOR DATED BY THE OWNER, GORDON POTTS

Plaintiff argues that the change of beneficiary form was not valid, as it was not signed by the deceased, Gordon Potts. Plaintiff avers that the deceased did not do all that he could to effectuate a change of beneficiary. All he had to do was fill out the form, sign and date it and send it to the company. "A mere unexecuted intention to change the beneficiary is not sufficient" , Cronbach v. Aetna Life Ins. Co., 284 S.W. 72, (1926). The failure of Mr. Potts to sign his name on the change of beneficiary form goes to his intent to change the beneficiary and his intent to make this document his own. By failing to sign his name, he has shown us that he had no final intention of changing the beneficiary because he failed to fill out the form properly. He not only failed to sign his name, he failed to indicate his marital status, failed to list his telephone number and failed to date the form. The company requires that a "change must be made on a form satisfactory to CG and signed by the Owner." He used the form provided by the company, but failed to sign it. The form itself gives instructions in two separate areas on the front page regarding the importance of signing the form. Under the heading "How to Complete" the instructions state, "Upon completion, please sign below". Another location on the front page of the form states "if additional space is necessary, please complete on separate paper with signature and date". The attempted change of beneficiary must fail, as it does not substantially meet the requirements set down by the company. Mr. Potts failed to do all that he could do and what he could have done was to sign his name.

Without his signature we cannot be certain that the deceased. Gordon Potts as a final expression of his intention prepared the form. How can we be certain that the handwriting is that of the deceased, Gordon Potts? This form was not filled out in its entirety, which indicates that he may have had second thoughts or that he changed his mind. Well, Why did he mail it to the company without being signed? There is no proof in the record that Mr. Potts himself actually mailed this change of beneficiary form. There was no cover letter that accompanied the form to indicate that the form was from Gordon Potts, Sr. See responses of Connecticut General Life Insurance Company to Request for Production of Documents wherein the Plaintiff requested the Company to provide all written communication regarding any change of beneficiary forms. Since he did not substantially complete the form we cannot assume that he had the requisite intent to change the beneficiary.

By not having a signature it clouds the authenticity of the person who filled it out. What was his mental state? Was he being coerced? Could this be fraud or forgery? Or was he merely interrupted? Did he change his mind? Was he confused? Was he under undue Influence? Taken in light most favorable to the defendants, Mayforth, Potts, and Nelson, we will assume for purposes of this motion that the handwriting which appears on the form is that of the deceased, Gordon Potts, Sr. However, assuming he did fill out this form, something prevented him from completing it and signing his name, and this something, whatever it was, is directly related to his final intention to change the beneficiary. Mr. Potts failed to let us know what he wanted to do by signing the form and claiming this change to be his free act and deed.

This Court must follow the rule of law in Tennessee

as set forth in Cronbach, supra, " A mere unexecuted intention to change the beneficiary is not sufficient". There is too much danger of fraud involved for this Court to hold that an unexecuted and unsigned change of beneficiary form is valid.

Wherefore, the Plaintiff moves for summary judgment as there are no genuine issues of material fact in dispute and as a matter of law Plaintiff is entitled to Summary Judgment as the sole beneficiary of the policy proceeds.

RESPECTFULLY SUBMITTED,

"s/Kathryn Dugger"
Kathryn J. Dugger

KATHRYN J. DUGGER
TN BPR NO. 012964
Dugger & Cole
Attorneys at Law
615 Elk Avenue
Elizabethton, TN 37643
(423) 542-4183
Attorney for Plaintiff

CERTFICATE OF SERVICE

I, Kathryn J. Dugger, hereby certify that a true and exact copy of the foregoing Motion for Summary Judgment has been forwarded by first class U.S. Mail, postage prepaid to all attorneys and parties of record on this the 6th day of April 2000.

"s/Kathryn Dugger"
Kathryn J. Dugger

NOTICE

Please take notice that I, Kathryn J. Dugger, will appear before the Honorable Richard Johhnson, Chancellor on the 22nd day of May 2000, at 11:00 a.m. in the Chancery Courtroom, Elizabethton, Tennessee and present the above Motion for Summary Judgment.

This the 6th day of April 2000

"s/Kathryn Dugger"

I, Charlotte McKeehan, Clerk and Master of the Chancery Court, Elizabethton, Tennessee, hereby certify that this is a true and perfect copy of the original Motion for Summary Judgment filed in this case.
This Sept. 7, 2000
"s/Charlotte McKeehan"
Clerk and Master

APPENDIX J-1

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

PEARL LYNELL POTTS, ET AL. v. MARY POTTS MAYFORTH, GORDON R. POTTS, JR. AND CONNECTICUT GENERAL LIFE INSURANCE COMPANY

Chancery Court for Carter County
No. 24432

MARY POTTS MAYFORTH AND, GORDON R. POTTS, JR., APPELLANTS
PEARL LYNELL POTTS AND CONNECTICUT GENERAL LIFE INSURANCE COMPANY, APPELLEES
Court of Appeals Eastern Tennessee No. E2000-03116-COA-R3-CV

APPLICATION FOR PERMISSION FOR EXTRAORDINARY APPEAL

Comes now, Defendants Mary Potts Mayforth and Gordon R, Potts, Jr., pro se Defendants/Appellants on Application for Extraordinary Appeal pursuant to T.R.A.P Rule 10 (1): the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal.
Word Count: 4,893 words

REASONS WHY EXTRAORDINARY APPEAL IS APPROPRIATE AND NECESSARY

1. The conduct of the lawyers and the judges in this case has repeatedly departed so far normal procedure and from the Law, as written in the U.S. Constitution, Rules of Civil Procedure, Tennessee Code, Rules of Appellate Procedure, and Rules of Evidence that immediate review by the Tennessee Supreme Court is necessary:

The action of a single Court of Appeals judge removed evidence and parts of the record from review (Order, Exhibit A) and released a principal party from the action (Order, Exhibit B). His decision was based on his independent and incomplete review of the Record (index of Record, Exhibit C) and the conclusion that Appellant Mayforth was acting as Defendant Potts' attorney. There was no previous Motion asking to exclude pleadings on this basis. In his Order (Exhibit A), Judge Swiney claims to have received the record in four volumes on April 31, 2001 and carefully reviewed it before issuing his May 3, 2001 Order to withhold pleadings from review. The question of Ms. Mayforth representing her brother arose in the Chancery Court, but it was never found that Ms. Mayforth was guilty of functioning as her brother's attorney. Defendant Mayforth and Potts collaborate on joint petitions and Ms. Mayforth (owning a better computer) functions as typist for the Defendants/Appellants. She made a clerical error on the Certificate of Service on the two pleadings noted by Judge Swiney. A transcript of the hearing on November 13, 2000 submitted with the Appeal confirms this fact. The documents omitted from review by Judge Swiney's Order were part of the Court file and were upon significant material issues. The Defendants/Appellants were not notified prior to the issuance of this Order that

these pleadings were being considered for omission or that misrepresentation was in question.
The Defendants/Appellants asserted that the original suit filed was malicious prosecution and filed several pleadings to that effect, but neither the Chancery Court nor the Appeals Court saw fit to examine the Complaint (Exhibit D) for its truthfulness, nor examine the evidence presented in the pleadings in the record on review. During the last 2 months of the trial, due process was lacking, the civil rights of the Defendants were abused, and the interpretation of the law was bent far off course. The conduct of the trial was chaotic and was conducted simultaneously in the Federal and State court, with the issues in the Plaintiff's Complaint being settled in two hearings. The first hearing on November 13, 2000 (Order Exhibit E) was on a Motion for Sanctions ending in a default judgment against Defendant Potts, where the exact amount of money claimed to be stolen by both Defendants was awarded to the Plaintiff as a sanction against only one defendant. T.R.C.P. 55 does not permit the use of default judgment against one party as a summary judgment against another, or the disposal of another party's assets not charged with sanctions. When Defendant Mayforth, present in Court, asked for evidentiary hearings on the items being sanctioned or to be allowed to testify as to her interests in those items, she was prevented from doing so by threats of incarceration by the Chancellor. In addressing the denial of Defendant Potts' jury trial on Sanctions, the Appeals Court Opinion incorrectly states (Exhibit F, page 5) that "one is not entitled to a jury trial in a contempt proceedings". The Sanctions against Mr. Potts were not for contempt- the Contempt Motion was dismissed. The Sanctions were for theft by coercion and for perjury, both eligible for jury trial. The remainder of the suit was adjudged on November 27, 2000 (Exhibit G) in Carter County Chancery Court in a hearing for Summary Judgment on a date that was

scheduled by the Plaintiff in violation of two previous court Orders while the Defendants, unawares, were hundreds of miles away. To add insult to injury, the jury trial scheduled two days later was cancelled by the Chancellor at the same time he gave Summary Judgment, so Defendants Potts and Mayforth were denied a jury trial on the remaining matters in the case. The Defendants/Appellants have been treated with disrespect by the courts and the court's Officers because the case is so complex that no one seems to want to take the time to find the truth. We beg the Supreme Court's understanding on the complexity of the case, and remind the Court that the Defendants/Appellants Potts and Mayforth did not cause this action to issue, nor prolong it needlessly. Were it not for the misconduct of the other parties involved, we would not be asking for your consideration. There were so many errors by the judges and attorneys in this case that there is a need for the Supreme Court's authority.

2. There is a need for determination of the action on appeal, due to the removal by Judge Swiney of the party, Connecticut General Life Insurance Company, and the dual nature of jurisdiction during the case. There were 11 months of Federal proceedings that were remanded to the State Court 38 days before the Summary Judgment that were not incorporated into the Court files. The bulk of the Federal pleadings were 1) filed because Connecticut General processed an unsigned Change of Beneficiary form and withheld this fact from discovery until 71/2 months after the suit was filed; 2) Pleadings filed disputing an Order fraudulently drafted by the attorney for Connecticut General, Reginald Keaton, and needing to be clarified by the Federal Judge who issued the Order (wrongly drafted version Exhibit H-1, and clarification of that Order exhibit H-2, attached Order page 2); 3) Recovery of

Defendants Mayforth and Potts costs incurred in the suit due to Connecticut General's error; and, 4) Motions by the Plaintiff to collect as beneficiary on the insurance proceeds. Since these issues of processing forms and of who is the rightful beneficiary have been split and then merged, then split and merged again between the Federal and State Courts, we are in need of the Supreme Court's opinion on jurisdiction. The Opinion of the Appeals Court was non-responsive to the issues on Appeal. While a review of the facts surrounding the contested change of beneficiary is normally heard in District Court, the beneficiary has also been tied to theft by coercion in the Plaintiff's Complaint. Is the Plaintiff's case a matter of State or Federal jurisdiction? Since the case was remanded to Chancery on October 20, should the Defendants have been allowed more time per T.C.A. 28-1-115 to incorporate the federal pleadings and present them to the Court before a hasty judgment on November 27, 2000?

3. Questions of law needing interpretation were not responded to by the lower courts with regard to the Defendants/Appellants' requests for review of U.S. and Tennessee law, Civil and Appellate Procedure, and Rules of Evidence. Interpretation by the Supreme Court is needed. With regard to the actions of Judge Swiney in the Appeals court, we require interpretation of T.R.A.P. Rule 22(d). With regard to Summary Judgment and T.R.C.P. 56, we feel that the Judgment was not molded to the facts and that this was not an appropriate substitution for a jury trial. With regard to TRCP Rule 11, Defendants filed a Motion for Sanctions against the Plaintiff and the Plaintiff's attorney claiming malicious prosecution where Rule 11 should apply. The three elements of abuse of process have been fulfilled: 1)the suit was brought without

probable cause and without sufficient investigation of the facts before filing the Complaint; attorney Dugger filed using the "shotgun" approach and hoped for verification upon discovery; 2) the action was brought with malice by a spurned wife who harassed the Defendants; and 3) the action terminated in the Plaintiff's favor. The questions of the sufficiency of the evidence on findings made without a jury trial pursuant to T.R.A.P. Rule 52.02 were raised on appeal, but not responded to by the Court. With regard to rules pertaining to Discovery, the Plaintiff refused to comply with requests for Discovery from Defendants Potts and Mayforth, and none of the Discovery requested by Potts and Mayforth was produced by the Plaintiff before judgment. We require interpretation of T.R.C.P. 12.02, T.R.C.P. 41.01, T.C.A. 20-12-110 and T.C.A. 20-12-101 in the processing of a nonsuit by the Plaintiff. Mary Mayforth was nonsuited (Exhibit I) on all of the allegations made against her by the Plaintiff, but was not adjudged the victor in the case. There are important constitutional rights questions that were brought before the Chancery and the Appeals courts that were not responded to, with reference to the denial of a jury trial, and a right to further investigation of the facts to Potts and Mayforth per U.S. Constitutional Amendment 7 and Amendment 9 and T.C.A. 21-1-103. With regard to the failure to incorporate the Federal Pleadings into the Court File, we require interpretation of T.C.A. 28-1-115. With regard to default judgment, we require interpretation of T.R.C.P. 55, in the context of the grounds for judgment versus the insufficiency of the evidence, denial of a jury trial, denial of the testimony of a principal affected party, and denial of evidentiary hearings. We also require an interpretation of the law with regard to the Summary Judgment dispensing of assets belonging to a defendant, Alice Elizabeth

Nelson, who was not considered whatsoever in the Judgment

RELIEF REQUESTED

Defendants/Appellants Mary Potts Mayforth and Gordon R. Potts, Jr. request the following relief: 1) Reversal of the Summary Judgment against Defendants/Appellants; 2) Dismissal of the Default Judgment against Gordon R. Potts, Jr.; 3) Remand the issues of the beneficiary of life insurance proceeds and the processing of the Change of Beneficiary form by Connecticut General Life Insurance Company for a new trial; 4) Reversal of the decision allowing Connecticut General Life Insurance to withdraw from the suit; 5) Sanctions against the Plaintiff, Pearl Lynell Potts, and her attorney, Kathryn Dugger for refusal to comply with discovery, malicious prosecution and fraud upon the Court, or an Order for further evidentiary hearings on these matters; 6) Sanctions or default judgment against Connecticut General Life Insurance and their attorney, Reginald Keaton, for deceit and fraud upon the court; 7) assess all costs to date against the Plaintiff and Connecticut General Life Insurance; and, 8) A Stay of Execution pursuant to T.R.A.P. Rule 7with regard to the dispensation of the insurance proceeds and all collection of monies from the Defendants/Appellants dictated by the judgments entered by the Courts of this State pending the completion of appeal.

STATEMENT OF FACTS

1. The original Complaint (Exhibit D)was filed on September 1, 1999, 10 days after the death of the Plaintiff's husband and the Defendants' father. The Complaint was amended twice by the Plaintiff's attorney, Kathryn Dugger, to remove untruthful

accusations against Defendants Potts and Mayforth, and then nonsuited (Exhibit I) entirely against Defendant Mayforth and partially against Defendant Potts six days before the final judgment without filing a Notice of Dismissal. The Plaintiff was angry that her husband (the deceased) had left her on July 6, 1999, and had taken funds from the TI Federal Credit Union with him and was spending his last weeks with his daughter, Mary Mayforth. The Plaintiff made so many harassing phone calls to both Ms. Mayforth and Mr. Potts that Ms. Mayforth filed telephone harassment charges. Recordings of some of the Plaintiff's malicious and harassing phone messages were submitted as Exhibits in the pleading, Defendants Response to Motion to Reconsider Setting a Hearing Date. The Plaintiff's husband personally withdrew $22,000.00 from his bank account in Tennessee on the morning of July 6, 1999 and drove out of the state of Tennessee and placed a phone call to Defendant Mayforth to come and get him in Virginia. The Plaintiff's husband later transferred those funds by mail to his son, Gordon Potts, Jr., as repayment to both Defendants/Appellants Mayforth and Potts for their college tuition, as per the divorce Order made in 1974 between Mr. Potts, Sr. (the deceased) and his ex-wife, Joyce Potts (nka Joyce Harper). This divorce decree is contained in the Court Record as an exhibit to the Defendants Amended Motion for Sanctions. The Plaintiff's husband also cashed in another insurance policy with AETNA while residing in Maryland with Defendant Mayforth and wrecked his truck in Wheaton, Maryland. Although the Plaintiff's husband was physically terminally ill, the medical records gained in Discovery by the Plaintiff do not reflect that his mental capacity was affected, with the exception of a drug overdose causing temporary dementia in March of 1999. The Plaintiff's husband

and father of Defendants Potts and Mayforth died in San Marcos Texas on August 19, 1999 while en route to see his son. The widow immediately sought attorney Kathryn Dugger, who maliciously sued Defendants Potts and Mayforth only days after their father's death, claiming that they both forced their father to transfer funds to them and to sign a form changing his beneficiaries, and accusing the two of theft by coercion (which was never proved in the case). The case was removed to federal court, remanded back to state court, then bifurcated by the state court and the insurance issues remanded to federal court, which were eventually remanded back to state court by a Federal court judge. An important discovery was made when the party, Connecticut General Life Insurance, produced the Change of Beneficiary form, which had been processed but never signed. A deposition of Connecticut General employee, Lisa Weaver was taken in which she admits to negligently processing the form. This caused the case to remain in Federal court for 11 months and added expenses for legal fees that Defendants Potts and Mayforth could not afford to pay. The attorneys for Potts and Mayforth withdrew, citing "conflict of interest". Mayforth and Potts contacted several attorneys, but could not get anyone to take the case, and thereafter appeared pro se. The issues in the Complaint was adjudicated in two hearings- one for default judgment under TRCP 55 on November 13, 2000 and one for summary judgment on November 27, 2000. On November 13, 2000 the Court's denied the request of a of a jury trial on the Sanctions leading to default judgment issues as requested by Defendant Potts per T.C.A. 21-1-103 and denied Defendant Potts' request to testify by telephone. Defendant Mayforth was present for the November 13, 2000 hearing, and requested an evidentiary hearing, but was not allowed to testify as to

her knowledge of the facts (she being the only person in physical contact with the deceased from the evening after he withdrew the funds in Tennessee until the time of his death), or to the distribution of her personal assets through default judgment against her brother. The Chancellor's response to attempts by Defendant Mayforth to testify was to threaten to throw her in jail. The scheduled hearing date for summary judgment was stricken by Order (Exhibit E, bottom of page 4) because it conflicted with the Scheduling Order which states that no hearings on Motions would be held within 5 days of the jury trial. The judge's Order on the hearing of November 13, 2000 was prepared by the Plaintiff's attorney, Ms. Dugger, signed on November 21, 2000 by the Chancellor, and received by Defendants Potts and Mayforth on November 24, 2000, yet the hearing for summary judgment proceeded three days later on November 27, 2000 in violation of two previous Orders. There was no new Notice of Hearing issued, and there was no Order issued prior to hearing that reinstated the hearing on November 27, 2000, so Defendants Potts and Mayforth were not properly notified and did not appear on November 27. Ms. Mayforth was having a cast put on her son's arm on November 27, and the court clerk knew this before the hearing. Also granted on November 27, 2000 was the Motion of Connecticut General Life Insurance Company for an Order Enforcing Settlement Agreement (Exhibit H-3). This is one of the pleadings where Reginal Keaton defrauds the Court by misrepresenting the Federal Court Order (Exhibit H-1 and clarification Exhibit H-2) by saying that the Federal Judge had Ordered that Connecticut General could withdraw with no further liability and calling the Order a "settlement agreement". While Defendant Potts was en route to appear for the jury trial scheduled for

November 29, 2000 and Defendant Mayforth was preparing to depart for the jury trial, Ms. Mayforth called the court clerk's office and was told that the jury trial had been cancelled.

2. An Appeal was filed in the Tennessee Court of Appeals, Eastern Division on December 11, 2000 by Defendants/Appellants upon the decisions made in the Chancery Court of Carter County. The Relief requested in the Appeal was: 1) the reversal of two judgments- Summary Judgment and Default Judgment, 2) reversal and recovery of costs from the Plaintiff due to the Plaintiff's non-suit of Ms. Mayforth, 3) remand for a new trial on determination of the insurance beneficiary for lack of evidentiary hearings and lack of inclusion of Federal court documents, or grant default judgment in favor of the Defendants against Connecticut General Life Insurance for negligence in processing the Change of Beneficiary form, 4) Sanctions against the attorney for Connecticut General Life Insurance, Reginald Keaton for deceit and fraud upon the court for withholding discovery of the Change of Beneficiary form while negotiating an agreed Order and repeatedly misrepresenting that Court Order as a "settlement agreement" and fraudulently adding dismissal of his party to the Order, and 5) grant Sanctions filed by Defendants/Appellants against the Plaintiff and her attorney, Kathryn Dugger for malicious prosecution and fraud upon the court.
3. An Opinion was issued on August 8, 2001. The Appellants did not receive a complete copy of the Opinion until August 23, 2001 and September 1, 2001. The Opinion (Exhibit F) of the Appeals Court is incorrect with regard to the facts, was not responsive to the issues submitted for review and many of the pleadings in the case were not examined by the Appellate Court: The Opinion contains misstatements

and errors that favor the position of Plaintiffs/Appellees and limit the defense of the Defendants/Appellants . The pleadings that the Defendants/Appellants asked for the Court to review in their behalf have not been considered. Some statements contained in the Opinion are incorrect with reference to the Record, specifically:

a) page 1, par.1;
b) page 2, par. 3 where the Opinion re-states the Federal Order (see Exhibit H-2, attached Order, bottom of page 2, continued at top of page 3). The Federal Order does not state that the party, Connecticut General is dismissed, and this mistake in the Opinion was likely made due to the submission of yet another fraudulent representation by Reginald Keaton to the Court of Appeals in Connecticut General's Motion for Order Declaring that Connecticut General Life Insurance is Not a Party to the Appeal (Exhibit H-4, top page 2);
c) page 4, par.2 and par 3 where the Opinion refers to the Plaintiff's Motion to Reconsider Setting a Hearing Date. Paragraph 3 states that the Defendants were given proper notice of the hearing. This is not true. First, although the Motion for Summary Judgment was filed on April 7, 2000, it was filed in the Chancery Court before the Chancery court remanded the issues contained in this Motion to Federal Court. The proper procedure would have been to either re-file the Motion for Summary Judgment in the Federal Court or to reserve hearing on the disposition of the insurance beneficiary until incorporation of the Federal pleadings as per T.C.A. 28-1-115. Secondly, after the hearing was cancelled by Order, a new Notice of

Hearing should have been issued with 5 days notice per T.R.C.P. 6.04, which did not occur.

d) on page 5, par, 2 "His sister, Mary Mayforth attempted to represent him by filing and signing a response to the Motion for Sanctions". This statement is wrong. This is a smokescreen set up by the Plaintiff's attorney to detract from the issues of malicious prosecution and prevent review of the evidence. Defendant Potts did not file a Response to the Motion for Sanctions against him, therefore it could not bear Ms. Mayforth's signature. The following pleadings were submitted as Defendant Potts' response to Plaimtiff's Motion for Sanctions and none of them stated that Ms. Mayforth was acting as his attorney: Response to Motion for Contempt (Exhibit C, R vol. 3, p 361), Request to Appear Via Telephone (missing from the Index of the court record) certified as only being delivered by Defendant Mayforth, and a Request for Jury Trial (Exhibit C, R vol 3, pages 317, 321) signed and mailed by Potts alone. Additionally, Ms. Mayforth admitted clerical errors on other documents but denied that she was attempting to represent her brother before the Chancery Court. This is contained in the transcript of the hearing date submitted on Appeal. There was no judgment issued in Chancery stating that Ms. Mayforth was acting as her brother's attorney.

e) Page 5, last paragraph- The Motion heard that day and awarded in default Judgment were not for Contempt, as this paragraph states. The bank records were produced by the deadline given in a previous court order, that's why the Contempt charge filed by the Plaintiff and heard that day was withdrawn and dismissed. There was no

violation of a Court Order. The Default Judgment was a Sanction for alleged theft and lying on interrogatories. This entitled Defendant Potts to the jury trial that he requested.

f) Page 5, paragraphs 3 and 4- the Opinion restates the dialogue of the Chancellor as if it were uncontroverted truth and assumes that Defendant Potts gave no defense. The Appeals Court ignores that Defendant Potts claimed in his Response to Motion for Contempt that the Plaintiff had possession of his documents when they were originally requested, and offered a Change of Address form from the post office that originated from the Plaintiff showing that the statements were originally mailed to the Plaintiff's address, ergo, the Plaintiff's discovery asked for Defendant Potts to provide financial information that only the Plaintiff possessed. Defendant Potts said in his Answers that his father had given him around $20,000.00, based on recall alone. Nefarious strategy was used by the Plaintiff's attorney in securing the default judgment. The physical records show that the attorney for the Plaintiff, Ms. Dugger, knew in March, 2000 upon receipt of Defendant Potts' Answers to Interrogatories that the amount of money actually deposited in Defendant Potts' account did not match the $20,000.00 amount stated in his Answer because she alone possessed the cancelled checks stamped by South Padre Bank showing the deposit amounts, and the Plaintiff's attorney did not reveal the error in Mr. Potts Answers or produce the cancelled checks until six months after receiving the Answers on September 27,

2000 when filing for Sanctions. Defendant Potts did not have any idea of exact deposit amounts because he did not have any bank records or copies of these cancelled checks. The fact that Defendant Potts did not have possession of his bank statements or the canceled checks but the Plaintiff did have this information nine months before filing for Sanctions, and did not produce these records or give Defendant Potts opportunity to correct his Answers to interrogatories before Sanctions were sought makes the action filed entrapment. Defendant Potts appeared on the original date of hearing on this matter, but did not appear before the court in person because of prejudice by the judge and because he requested a jury trial on the matter. Not appearing for a court date does not automatically entitle the Plaintiff to Default or Summary Judgment.

g) On Page 6 of the Opinion, the Appeals Court reviews the Summary Judgment only in reference to the unsigned beneficiary form. Substantial compliance was asserted by Defendant/Appellants by asking for the Court to compare the fact that the handwriting on both the old and new beneficiary forms was identical and that Connecticut General had fully processed the form and affirmed so in a letter to the holder of the policy. This was not addressed in the Opinion. The facts stated in the first section of the Appellants' Brief with regard to Summary judgment ask for review of the merits of the Plaintiff's Complaint, of which the beneficiary is only a part. Our requests for review of nonsuit, malice, deceit, fraud upon the Court and untimely hearing without due process

are not addressed in the Court's Opinion. Defendants/Appellants cited nine items for review with the Notice of Appeal.

4. Motions granted by a single Appellate Court Judge:

a) A primary party to the Appeal, Connecticut General Life Insurance Company was released from the action by a single Appellate Judge via an Order on 6/1/2001 (Exhibit B) before filing a Brief. The dismissal of this party was based on a Motion to the Appeals Court (Exhibit H-4) placed by Connecticut General Life Insurance that fraudulently represents the wording of a Federal Court Order to include the Insurance Company's "dismissal", and therefore claims that the issues on appeal do not concern Connecticut General. The Defendants/Appellants Motion to Reconsider (Exhibit H-2) was denied. This decision by Judge Swiney was dispositive of a principal party and in conflict with T.R.A.P. Rule 22(d).

b) Appeals Court Judge Swiney, acting alone, also issued an Order (Exhibit A) to remove pleadings from the record on Appeal on May 3, 2001 and elaborated upon this Order on May 21, 2001 in a subsequent Order (Exhibit A). The Order states that it is responsive to Judge Swiney's own review of the Record, and does not reference any precipitating motion by the Appellee. The Record arrived in 4 technical record volumes on April 30, 2001- three days before the Order was issued. The Defendants/Appellants were not notified prior to the issuance of this Order that these documents were being considered for omission or that misrepresentation was in question by Judge Swiney. The documents omitted from review by Judge Swiney's Order were part of the Court file and were upon principal material issues.

5. Non suit: There is a need for interpretation of the law by the Supreme Court for interpretation and review of T.R.C.P. 12.02, T.C.A. 20-12-110, T.C.A. 20-12-101, and T.R.C.P. Rule 41.01 in light of the fact that the Plaintiff's Complaint was nonsuited (Exhibit I) in all claims against Ms. Mayforth and there was no claim remaining for which relief could be granted . We posed this same request to the Appeals Court, but received no interpretation. . In the Chancery proceedings, the Plaintiff's attorney typed an Order of Dismissal Without Prejudice (Exhibit D-2) and brought it before Chancellor Johnson for his signature on November 21, 2000. This Order was submitted under T.R.C.P. Rule 41.01, a voluntary nonsuit, but Rule 41.01 requires the Plaintiff to file a notice of dismissal, which she did not do. Rule 41.01 cannot be executed without opportunity for further action by the Defendant if a counterclaim exists. We contend that a Counterclaim existed in that a Notice of Intent to Seek Sanctions, (Exhibit C, R vol 3, p. 355) had been filed a week earlier by Defendants Potts and Mayforth, which pointed to the very items contained in the Order of Dismissal Without Prejudice as proof of malice in filing the Complaint before sufficient discovery of the facts. Summary Judgment was granted against Ms. Mayforth six days after the Plaintiff nonsuited the claims against her and fees and costs assessed against Ms. Mayforth and Mr. Potts.

6. Jurisdictional Controversy:

The Trial was conducted in both Federal and Chancery Court and the pleadings were not incorporated into the adjudicating Court File at the time of Summary Judgment in violation of the rights of the Defendants with regard to T.C.A. 28-1-115. The subject of jurisdiction has been tossed back and forth between the Federal and State Court

and the bifurcation by the State Court was an unorthodox solution. Normal procedure so differs from this course as to require review by the Supreme Court as to jurisdiction and adherence to the Law.

Respectfully Submitted,

"s/Gordon R. Potts, Jr." 9-4-2001

Gordon R. Potts, Jr., pro se Date

"s/Mary Potts Mayforth" 9-5-2001

Mary Potts Mayforth, pro se Date

CERTIFICATE OF SERVICE

I, Mary E. Mayforth, do certify that I mailed a true and accurate copy on 9-5-2001 of the Application for Permission for Extraordinary Appeal filed by Defendants Mary Potts Mayforth and Gordon R. Potts, Jr., pro se, to the following parties:

Kathryn Dugger, Dugger and Cole, 615 Elk Avenue, Elizabethton, TN 37643

Reginald Keaton, Frantz, McConnell & Seymour, P.O. Box 39, Knoxville, TN 37901

"s/Mary E. Mayforth" 9-5-2001

Signed Date

APPENDIX J-2

APPELLANTS BRIEF

With Exhibits from pleadings in case #24432

Appeal of Carter Co. Civil Case #24432

Potts v. Potts, Mayforth, Connecticut General

Tenn. Court of Appeals, Eastern Case No. E2000-03116-CO4-R3CV

Appellants- Mary Potts Mayforth and Gordon R. Potts, Jr.

Appellees- Pearl Lynell Potts, Kathryn J. Dugger, and Reginald Keaton for Connecticut General Life Insurance

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ISSUES ON APPEAL

1. Pearl Lynell Potts harassed the Appellants.
2. The suit filed by the Plaintiff is malicious prosecution.
3. Plaintiff's Attorney, Kathryn Dugger , is subject to Rule 11 Sanctions because she did not make a necessary investigation of the facts prior to filing, and the suit was filed prematurely (10 days following the death of the Plaintiff's husband.)
4. Plaintiff commits perjury and slander in the Complaint filed.
5. Kathryn Dugger abused process by improper use of process after issuance, and committed fraud upon the Court by orchestrating a plan to obscure facts and present testimony by defendants from being presented. We feel that this is grounds for disbarment or discipline under Tenn Rules of Civil Procedure 23-3-201.
6. That the Court erred in hearing testimony from Plaintiff and other adversary parties without the inclusion of the defendants, Mary Potts Mayforth and Gordon R. Potts Jr. and also Alice E. Nelson.
7. That Summary Judgment should be reversed because there were material issues of fact and evidentiary hearings were not held. Also, Tenn Rules Civil Proc. Rule 56.01 requires 30 days notice of hearing on Summary Judgment.
8. Judge entered Default Judgment on November 13, 2000. Written Notice of Application for Default Judgment was not given to Defendant. Issuance of Default Judgment was in err and said Default Judgment against one defendant/appellant constitutes Summary Judgment against both appellants and that no evidentiary hearing was held.

9. That the Court erred by not molding the Judgments to fact as per Tenn Rules of Civil Procedure 20-6-403.
10. That the Court erred in not granting a continuance of the Jury Trial per 20-2-214.
11. That the Court erred in assessing Court Costs and Attorneys fees against Gordon R. Potts, Jr. and Mary Potts Mayforth and awarding Summary Judgment to Plaintiff after Plaintiff filed a "nonsuit". According to Tenn Rules of Civil Procedure 20-12-110 and 20-12-101, the defendant is the rightful successful party in a "nonsuit" and entitled to full costs.
12. The Appellants claim that the above mentioned "non-suit" was actually an Amended Complaint, and that the Plaintiff's attorney again abuses process by labeling it as "nonsuit", and withdrawing only selected portions of the Complaint against Gordon R. Potts, Jr. and Mary Potts Mayforth without fully dismissing these two from the suit. If the Court of Appeals deems that this is indeed a "nonsuit", then Appellants ask that Pearl Lyneli Potts be assessed all court costs and attorneys fees to be paid to Mary Potts Mayforth and Gordon R. Potts, Jr. as the rightful successful parties. If this Action is deemed by the Appellate Court as being an Amended Complaint, then we ask that the Court Deny Plaintiff's Amended Complaint as being in conflict with the Scheduling Order and Issue Sanctions against the Plaintiff's attorney, Ms. Dugger for misuse of process.
13. That Connecticut General Life Insurance was the primary entity the Plaintiff's Motion for Summary Judgment, pursuant to Tenn Rules of Civil Procedure 25-3-135 and that the Court erred in assessing attorney's fees and court costs to Mary

Potts Mayforth and Gordon R. Potts, Jr. in this Summary Judgment.

14. That the Court erred in denying a jury trial to Gordon R. Potts, Jr and Mary Potts Mayforth as per Tenn Rules of Civil Procedure 21-1-103.
15. That the Court showed prejudice against Mary Potts Mayforth and Gordon R. Potts, Jr. on several occasions as evidenced by the record and transcripts of hearings. We feel it prejudiced the Defendants/Appellants for Judge Stanley to sign on Probate Documents and then also sign on the Bifurcation of the Case and Order to Compel. We feel that Chancellor Johnson should have recused himself.
16. That the type and amount of Sanctions against Gordon R. Potts, Jr., adjudged on November 13, 2000 was excessive and were in effect a Summary Judgment against co-defendant, Mary Potts Mayforth and Alice E. Nelson, as they had interest in these funds. We are asking that this judgment be reversed.
17. That on several occasions, due process was deliberately circumvented, to the detriment of Gordon R. Potts, Jr. and Mary Potts Mayforth, and that such abuse of process constitute violations of State and Federal Law. We ask for Sanctions against Kathryn Dugger and Reggie Keaton and that appropriate relief be awarded to Gordon R. Potts, Jr. and Mary Potts Mayforth.
18. That Kathryn Dugger and Reggie Keaton used Discovery in a manner not intended by law by abuse of process and withheld production of documents in a strategy to defeat Gordon R. Potts, Jr. and Mary Potts Mayforth of their rights to due process, prevent them from presenting evidence, and deprive them of their rightful jury trial.

19. That the Plaintiff's attorney, Kathryn Dugger and the attorney for Connecticut General Life Insurance, Reggie Keaton committed Fraud upon the Court by justifying pleadings for judgments meant to deprive the Appellants/Defendants of due process and justice, specifically in referring to an Order from the Federal Court, signed December 2, 1999 which was controverted in a subsequent Order on October 20, 2000 by the Federal Judge as being incorrectly written (by Mr. Keaton). We believe that this error was purposeful and that repeated requests by Dugger and Keaton to the Chancery Court to enforce the erroneously written Order AFTER the Order was controverted by the Federal Judge constitutes deliberate fraud. Pleadings filed by Ms. Dugger and Mr. Keaton upon this fraud were the mechanism for Summary Judgment issued November 27, 2000. Appellants/Defendants are entitled to relief and reversal of the Summary Judgment in the same amount awarded to the Plaintiff by the Trial Court. Both attorneys should be sanctioned for Rule 11 violations and fraud upon the court.
20. That the Plaintiff, Pearl Lynell Potts and the deceased, Gordon R. Potts, Sr., were in the midst of a separation/divorce dispute during the time that Mr. Potts Sr. transferred funds and changed beneficiaries. Gordon R. Potts, Jr. and Mary Potts Mayforth maintain that they are being held accountable for the actions of another person, and that this is in violation of Tenn. Rules of Civil Procedure 29-2-101 and U.S. Constitutional civil rights.

21. The court erred and showed prejudice by not assessing Connecticut General Life Insurance any fees or legal costs, nor issuing Sanctions against Connecticut General Life Insurance for omitting letters from production of documents requested by Plaintiff.
22. That no theft of funds from the deceased was proved, incompetence of the deceased was not proved, and the Court's award via Plaintiff's Motion for Sanctions should be reversed.
23. We ask recoupment in an equal amount demanded by the Plaintiff, and ask that all costs be adjudged against Pearl Lynell Potts as per Tenn Rules of Civil Procedure 20-6-402.
24. We question whether the jurisdiction of the Insurance Matters were rightfully and properly heard in State Court, and ask the Appeals Court Opinion of the Jurisdictional status of an insurance document drafted in Delaware, processed in Pennsylvania, having beneficiaries in three states, and claiming ERISA . We also ask whether the bifurcation of this case by Judge Stanley was appropriate, and if it was appropriate, would it not necessitate the dismissal of the joined suit and re-filing of the separate issues in two courts? Furthermore, we ask the Court's Opinion of whether the matter being remanded back to State Court on October20, 2000 should have dictated that Federal Court Documents be included in the case files for the State Court.

STATEMENT OF FACTS

Fact:	**Reference Record:**
Gordon R. Potts, Sr. left his wife on July 6, 1999	Plaintiff's Complaint
Gordon R. Potts, Sr. died on August 19, 1999	Plaintiff's Complaint
Plaintiff filed suit 12 days after husband dies.	Date stamp by Court on Complaint
Mary Mayforth has a B.S. in Agriculture	Answer to Complaint
Gordon R. Potts, Jr. does not have a high school diploma	Interrogatories, Exhibit F
The suit was adjudged in 2 hearings	Court transcripts November 13 and 27, 2000
Defendants Motion for Sanctions was denied	Court transcript, November 13, 2000
Defendants Motion to Amend Answer and Counterclaim was not adjudicated	Transcript of hearing November 13, 2000; statement of Reggie Keaton.
Plaintiff's Motion for Default Judgment was granted and Sanctions placed against Defendant Potts	Transcript of Hearing, November 13, 2000
The Change of Beneficiary was unsigned	Plaintiff's Exhibit to Motion for Summary Judgment, April 6, 2000
Defendants Potts and Mayforth were advised by the Insurance Co. in writing that they were beneficiaries	Exhibits to Def. Motion to Amend Answer /Counterclaim, April 11, 2000

Defendants/Appellants and third party Def. Alice E. Nelson were not present at Summary Judgment	Transcript of hearing November 27, 2000.
Federal Court Order of December 2, 1999 was written by Reggie Keaton incorrectly	Cover letter on Order to other parties by Reggie Keaton, Federal Order October 20, 2000 clarifying Court's intent.

CONTENTS OF THE APPENDIX

EXHIBITS

A. Defendants Response to Order of Dismissal....
B. Change of Beneficiary Forms (2) CIGNA Insurance
C. Defendants Notice of Intent to Seek Sanctions
D. Federal Court Order Remanding to State
E. Divorce Decree of Insured's first wife
F. Discovery Documents:
   1. Defendant/Appellant Gordon Potts Answers to Interrogatories
   2. Answers to Interrogatories of Connecticut General Life Insurance
   3. Defendants/Appellants Request/Interrogatories and Documents
G. *Tape of Plaintiff showing malice and harassment, submitted with Pleading 11/17/00
H. *Transcript of Deposition of Lisa Weaver
(*There are only two copies of these exhibits)

TRANSCRIPTS

I. Transcript of Proceedings on October 9, 2000
II. Transcript of the Proceedings on November 13, 2000
III. Transcript of the Proceedings on November 27, 2000

INTRODUCTION AND HISTORY

This suit was filed in Carter County Chancery Court on September 1, 1999 after the death of the Plaintiff's husband, Gordon R. Potts (hereinafter "the deceased", "Mr. Potts, Sr.", "Plaintiff's husband" or "defendants father"), twelve days earlier. The case number is 24432. The plaintiff, Pearl Lynell Potts (hereinafter "Plaintiff", "Plaintiff/Appellee") also filed papers as executrix of the estate in Carter County. The Attorney for the Plaintiff is Kathryn J. Dugger (hereinafter Plaintiff's Attorney, Dugger or Ms. Dugger) of Dugger and Cole in Elizabethton, Tennessee. There are multiple defendants. The Defendants are: 1) Mary Potts Mayforth (hereinafter Defendant/Appellant Mayforth," "Mary" or "Ms. Mayforth"), daughter of the deceased and step-daughter of the Plaintiff, age 44, College educated, working as a Conservationist for the State and Federal governments in Maryland; 2) Gordon R. Potts, Jr. (hereinafter "Defendant/Appellant Potts" or "Chip"), son of the deceased and namesake, age 40, step-son of the Plaintiff, no high school diploma, works installing security systems in rural Missouri and previously as windsurfing instructor in South Padre Island, Texas. 3) Connecticut General Life Insurance Company (aka CIGNA- hereinafter referred to as the "Insurance Company", or "Connecticut General"), a Delaware corporation, represented by Reginald Keaton (hereinafter "Reggie Keaton" or "Keaton") of Frantz, McConnell and Seymour in Knoxville; and, 4) Third party defendant added later- Alice Elizabeth Potts Nelson (hereinafter "Liz" or "Ms. Nelson"), age 45, college educated, works as Interior Designer in Dallas/Ft. Worth, Texas, sister of Defendants/Appellants Potts and Mayforth, step-daughter of the Plaintiff.

The suit was adjudged in two hearings before Trial Judge Chancellor Richard Johnson in Cater County, One, a Default Judgment heard November 13, 2000, and, Two, a Summary Judgment heard November 27, 2000. The jury trial scheduled for November 29-30, 2000 was canceled by the Court on the basis that there were no more issues to be adjudicated.

Defendants/Appellants Potts and Mayforth Appeal the Default and Summary Judgments, and this is the first Appeal. Defendants/Appellants also Appeal the Dismissal of their Motion for Sanctions, adjudged on November 13, 2000, the denial of the Jury Trials requested by Defendants/Appellants on (October 30, 2000 and November 8, 2000), and we include the lack of adjudication of our Motion to Amend and Counterclaim filed April 11, 2000 where we ask for Declaratory Judgment against Connecticut General.
The Relief requested on Appeal is: 1) Reversal of Summary Judgment in favor of Defendants/Appellants and grant relief to Defendants/Appellants, 2) Set aside the Plaintiff's Motion for Sanctions on the grounds that the attorney for the Plaintiff abused process and fraud upon the court, and reverse the Default Judgment awarded to the Plaintiff/Appellee for these Sanctions, 3) Grant Defendants/Appellants Motion for Sanctions against Kathryn Dugger and Pearl Lynell Potts, and award appropriate relief 4) Grant Declaratory Judgment in favor of Defendants/Appellants against Connecticut General Life Insurance Company and Reginald Keaton on the grounds of fraud upon the court, abuse of process, neglect, and deceit, 5) Assess all court costs and attorney's fees to be paid by the Appellees and hold Appellants harmless for such, 6) That the Court determine appropriate professional or monetary sanctions against the attorneys, Dugger and Keaton if the allegations of fraud upon the court, abuse of

process, or malicious prosecution are found to have merit within, and 7) The Defendants Appellants state that the recovery they desire does not exceed the demand of recovery by the Plaintiff in her Complaint and that they are entitled to like compensation not to exceed: $104,000.00 value of Insurance Policy, plus 10% interest as awarded to Plaintiff/Appellee, plus approximately $36,000.000- the amount awarded in Default Judgment to the Plaintiff upon Sanctions of Defendant/Appellant Potts, plus all costs and attorneys fees. The estimated total of these items combined is between $175,00.00 and $200,000.00, depending on court costs and total attorneys fees.

The Plaintiff's complaint:
The allegations in the Plaintiff's complaint are: 1) that Mary Potts Mayforth and Gordon R. Potts, Jr. coerced their father, Gordon R. Potts, Sr. into transferring money to them from his bank accounts in Tennessee, 2) that Mary Potts Mayforth and Gordon R. Potts, Jr. coerced their father to sign a form changing the insurance beneficiary on a policy underwritten by CIGNA (aka Connecticut General) to change the beneficiary from Pearl Lynell Potts to Mary Potts Mayforth, 3) that Mary Potts Mayforth and Gordon R. Potts, Jr. coerced their father into cashing in a life insurance policy with Aetna and stole this money by fraud, deceit and coercion, 4) That that Mary Potts Mayforth and Gordon R. Potts, Jr. abused their father by locking him out of a hotel room in Texas, 5) that that Mary Potts Mayforth and Gordon R. Potts, Jr. have stolen money and possessions from the deceased which are property of the estate and are holding them unlawfully, 6) that the deceased was incompetent and demented during the transfer of funds to the Defendants/Appellants while he was alive, thereby making this a fraudulent conveyance, 7) that the funds transferred before the death of the Plaintiff's husband are

property of the Estate, 8) and, that appropriate relief be granted.
The Plaintiff's complaint was amended twice.

History after the complaint:
We offer a condensed history, as it is quite extensive:
September-December, 1999: Defendants/Appellants Potts and Mayforth hired Stanley Givens to represent them and file a response denying Plaintiff's claims. Connecticut General retains Reginald Keaton to represent them and he files for removal to Federal court. Defendants/Appellants Potts and Mayforth for Stan Givens in early December for failure to communicate with them. Agreed Order is issued by State Court on December 2, 1999 allowing Connecticut General to deposit funds with the court. Additional text adds that Connecticut General be allowed to withdraw. Plaintiff sends Interrogatories and Request for production of documents to other parties.
January- March, 2000: Defendants Potts/Mayforth retain the firm of Wilson, Worley and Gamble to represent them. Tim McConnell is the new attorney for Defendants Potts and Mayforth. Discovery produces the fact that the beneficiary form being contested in the Plaintiff's suit has not been signed, but had been processed. Defendants Potts and Mayforth file a request to Amend their Answer to Complaint and Cross-claim based on the beneficiary form processing and ask for Declaratory Judgment against Connecticut General. The case is bounced back and forth from State to Federal Court on this issue for the next several months. Defendant/Appellant Potts moves from South Padre Island, Texas to Forsyth, Missouri. Defendants/Appellants provide Answers to Interrogatories and Production of Documents. Defendant/Appellant Potts is unable to produce some bank and tax documents at this time. Connecticut General responds to Interrogatories and Production of Documents from Plaintiff.

April-July, 2000: Plaintiff files Motion for Summary Judgment and Motion to Compel Discovery of missing items from Defendant/Appellant Potts. Motion granted and Defendant Potts ordered to produce proof that he had requested documents, and provide missing bank statements and tax form, he pays Plaintiff $300.00 attorneys fees. Attorney Dugger sends court order the following day to South Padre Bank to produce Defendant/Appellant Potts's bank statements. Bank produces these documents. Alice E. Nelson is added to the suit as a third party defendant by Connecticut General at the request of Defendants/Appellants attorney, Tim McConnell. Insurance issue is bifurcated from other issues by Judge Stanley sitting in Chancery Court. Federal Court is still reviewing claims on insurance issues in Federal Court. Connecticut General files Motion in state court to enforce "Settlement Agreement".

August-September, 2000: Insurance issues still on review by Federal Court. Plaintiff files Motion for Contempt against Defendant Potts, citing non-compliance with the Court Order. This Motion is dismissed in the hearing on November 13, 2000, as Plaintiff had received all of the discovery items that she asked for that were in existence. Plaintiff files Motion for Sanctions against Defendant/Appellant Potts, claiming that he lied on his responses to interrogatories and that he and his sister stole money from their father and deliberately concealed the theft by not producing discovery. This Motion was granted in the Default Judgment issued in the hearing on November 13, 2000.

October-November, 2000: Wilson, Worley and Gamble/Tim McConnell file Motion to Withdraw as Counsel for Defendants/Appellants on October4, 2000, citing conflict of interest over Sanctions charged by Plaintiff against Gordon R. Potts, Jr. The Judge hears the Motion from Wilson, Worley and Gamble on the next

morning when Defendants Potts and Mayforth are not present, but allows a continuation until the following Monday when the defendants will be present before passing judgment. Defendants/Appellants Potts and Mayforth appear in Court October 9, 2000 for hearing on the Withdrawal of their attorney and for the scheduled hearing of the Sanctions and Motion for Contempt filed against Gordon R. Potts, Jr. by the Plaintiff. The Court grants the Motion for the attorney for Defendants Potts and Mayforth to withdraw. Judge denies the oral motion of Mary Mayforth for a continuance of the jury trial scheduled November 29-30, but grants the Defendants 30 days in which to get new counsel and appear for the Contempt and Sanctions hearing. The deposition of Plaintiff's witness, Harrison Turner was scheduled for October 30, 2000, but is canceled by Ms. Dugger. Defendants, now pro se, file Motion for Sanctions against Ms. Dugger, the Plaintiff and Tim McConnell/Wilson, Worley and Gamble. This Motion is later amended to drop the Defendants/Appellants attorneys from the Sanctions. Defendants/Appellants file Responses to the Plaintiff's charges, requests for Discovery from the Plaintiff, Requests for Jury trials on disputed evidence and issues, and intent to seek Sanctions for Malicious prosecution and abuse of process. Plaintiff's attorney and Connecticut General file Motions for Summary Judgment and the distribution of the insurance proceeds. Defendant/Appellant Mary Mayforth appears for hearing November 13, 2000 and Defendant/Appellant Potts asks to be allowed to testify by telephone. Defendant/Appellant Potts' Motions for a jury trail on Sanctions and to appear via telephone are denied. The Court issues a Default Judgment against Defendant Potts and grants Connecticut General's Motion to deposit funds and withdraw from the case. The Court cancels the hearing of Plaintiff's Motion for Summary Judgment scheduled to be heard on November 27 due to conflict with the

Scheduling Order. All parties present agreed to a continuance of the final trial, but the Judge denies any continuation of the trail on November 29-30. Plaintiff writes Motion to reconsider hearing the Summary Judgment and presents it to the Judge the next day (November 14, 2000). Plaintiff's attorney, Ms. Dugger, drafts Order from November 13th and has it signed on November 21, 2000. Plaintiff also asks the Court for an Order of Protection from Discovery- We have no record of this being dispensed with, so are unsure of the status. Plaintiff asks for interest on insurance proceeds and 10% interest is granted by the Court on November 27, 2000. Plaintiff's attorney has Judge sign an Order of nonsuit on part of Plaintiff's claims against Potts and Mayforth. Judge hears Plaintiff's Motions for Summary Judgment and for Interest on Insurance proceeds on November 27, 2000. Defendants/Appellants are not present. Ms. Mayforth calls the clerk of the Court at 8:30 AM, well before the time for hearing and informs Clerk that she will not be there and that her child's hand is broken and being put in a cast that day. Any record of this call is not in the transcript, but part of the early portion of the hearing in the transcript is marked "off the record". The Trial Court Judge finds in favor of Plaintiff/Appellee on November 27, 2000 and cancels the jury trail scheduled in 2 days.
We refer to the List of Pleadings for a Complete History.

PRAYER:

It is our plea that justice be administered and that the truth be revealed. We wish the Court to acknowledge that we followed our father's final instructions and allowed him to do as he wished with his property and what was left of his life, and that this was an honorable thing. If any man be told that he has only weeks to live, then he should be able to choose how he spends that time and whom he spends it with. If any man decides to repay any debts or right any

wrongs before his death, this is reasonable. Our father was not demented or incompetent, and we resent the fact that the Plaintiff has posthumously branded him a weak fool. Gordon R. Potts Sr. was a strong man. One look at his medical records from these files will show that medically, he should not have been able to even walk, yet he walked, drove, socialized, conducted his business and paid his bills. Even on his final day, he was a man that stood up and challenged someone if he disagreed with you. He worked and supported his family from the time he was eight years old until he died. He was no fool and he was nobody's fool. We, the Appellants/Defendants in this case, have been the victims of cruel punishment by the Plaintiff because she is angry that her husband left her and more angry that he decided to leave his children a small portion of his wealth, feeling that he owed his children some compensation for the 22 years that we had been deprived of him by the Plaintiff's hatred and jealousy. We feel that the fact that the Plaintiff refused to pay for her husband's cremation or attend to his remains speaks volumes. Although this suit is being fought over who gets the death benefits and earned income of Gordon R. Potts, Sr., it has yet to be said for the record that he was a man of good character. We say it now- Gordon R. Potts, Sr. was a good man. We love him and we miss him.

ARGUMENT

I. **UPON SUMMARY JUDGMENT:**

A. Non-suit makes appellant the successful party. No claim upon which relief can be granted.

The Trial Court erred by not awarding full costs to be assessed against the Plaintiff as per **TCA 20-12-110**, which states that in cases of nonsuit (ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO PART OF PLAINTIFF'S CLAIM, November 21, 2000) the

defendant is the successful party; and per **TCA 20-12-101**, which states that the successful party in all civil actions is entitled to full costs.
Appellants/Defendants cite **TRCP 12.02** as failure to state a complaint upon which relief can be granted and upon which grounds our Motion to Dismiss the Plaintiff's claim should have been granted. The Court erred in signing the Order without any Motion presented prior, and in granting this modification without any notice to the Defendants, and in failing to incorporate in the Judge's decision the evidence of malicious prosecution presented by the Defendants to the court in both oral and written form as to the Plaintiff's items in the nonsuit. The Court erred in not considering the Appellants/Defendants submission that the Plaintiff had failed to state a claim in which relief can be granted (DEFENDANTS ANSWER TO SECOND AMENDMENT TO COMPLAINT , March 30, 2000) and had failed, (an eight month period elapsed after discovery of undisputed evidence contradicting her claim against the Defendants/Appellants) to withdraw these claims. Appellants ask for reversal of the Summary Judgment and that relief in the same amount awarded to the Plaintiff/Appellee in the Trial Court be awarded to the Appellants as per **TCA 20-6-402**, which states that if the demand of defendant equals demand of plaintiff, judgment for all costs is to be rendered for defendant.

1. **How the error was called to the Judge's attention:**

There is nothing anywhere in the record that indicates that Mary Potts Mayforth was found culpable of any of the claims made by the Plaintiff;

found responsible of any wrongdoing or action; or that the Plaintiff prevailed in any claims made against Mary Potts Mayforth. There was also nothing in the record to indicate that Gordon R. Potts, Jr. was culpable of any of the accusations against him in the Plaintiff's complaint that were nonsuited, and we contend that the because the Court denied both Defendants/Appellants due process in the Default Judgment issued against Gordon R. Potts, Jr., that this aspect of the Plaintiff's complaint was not proved, by any reasonable process of law to be true and also not successful. Since the Plaintiff/Appellee's claims against the Defendants/Appellants were not successful, then the Defendants/Appellants are the successful party and entitled to reversal of the Summary Judgment and to be awarded an amount equal to that awarded to the Plaintiff.

DEFENDANTS RESPONSE TO ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO PART OF PLAINTIFF'S CLAIM FOR RELIEF AS TO DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR. (being filed in lieu of a Response, as the Plaintiff issued no originating Motion), November 22, 2000,Page 1 item 1:

1. Plaintiff's attorney drafted this order without filing a Motion first, and she had several months to withdraw these claims after receiving information indicating that these claims were unfounded. The items withdrawn from the Plaintiff's Complaint of THEFT at this late date were:

Page 1 item 1, subsection 3:

Ms. Dugger received canceled copies of these checks one year ago, and knew that these funds were not in the possession of Ms. Mayforth from

that time forward, but did not withdraw the accusation until now;

Page 1 item 1, subsection 5, continued on page 2: Ms. Dugger is attempting to make it appear as if she has a *separate* claim against Mr. Potts, Jr. for this amount, and that this amount is somehow different from the amount she claims that BOTH defendants stole in her complaint. It is not separate, and the itemized list given by Ms. Dugger in court on November 13, 2000 to determine the amount of judgment against Gordon R. Potts, Jr. matches **exactly** the amounts she accused BOTH defendants of stealing in her complaint.

Page 2 item

2. Plaintiff's attorney, Kathryn Dugger, penned this Order only a few days before having it signed on the 21st of November, 2000, (we assume that the date of Service indicated by Ms. Dugger is the same as the date of signing, as Ms. Dugger's method of drafting Orders does not provide the Judge a space to date these Orders). Ms. Dugger wrote this Order only *after* Defendants Gordon R. Potts, Jr. and Mary Potts Mayforth filed an Intent to Seek Sanctions on November 13, 2000 against her for malicious Prosecution. In the past 3 weeks, immediately after forcing the withdrawal of the defendants attorney, Ms. Dugger has filed **5** Motions and had **2** Orders signed without even filing the required Motions: ..... Crucial pieces are omitted and one entire page is devoted to the moot point of whether Mary Mayforth may act as her brother's attorney. Portions of this transcript incriminate Ms. Dugger (and the Plaintiff), and it appears that Ms. Dugger, in writing the Order clearly omitted incriminating evidence against herself while devoting the bulk of this Order to trying to make it appear as if Mary Mayforth was

guilty of attempting to practice law in Tennessee without a license.

Page 2 item 3:

3. A Scheduling Order issued August 29th by Chancellor Johnson. Item six states " The Plaintiff shall file all motions to amend their Complaint on or before Thirty (30) days before trial." This Order of Dismissal amends the Plaintiff's Complaint

Page 3, item 4:

The Order for Dismissal was not granted in any previous hearings, the issue never discussed between the Plaintiff, the Plaintiff's attorney and the Defendants and there has been no notification made to the Defendants whatsoever prior to the signing of this Order. There has been no Motion for Dismissal of claims against Gordon R. Potts, Jr. and Mary Potts Mayforth presented prior to the order being issued.

Items not previously dismissed in timely manner:

DEFENDANTS POTTS AND MAYFORTH'S RESPONSE TO ORDER OF DISMISSAL WITHOUT PREJUDICE, November 22, 2000. (Exhibit A page 2, item 3)

Failure to state cause in which relief can be granted:

DEFENDANTS ANSWER TO SECOND AMENDMENT TO COMPLAINT, March 30, 2000, (page 1, First Defense) "Plaintiff fails to state a claim upon which relief can be granted." On page 4, lines 4-6 of the November 27 transcript, Ms. Dugger states that after the bifurcation of the insurance issues, the only thing remaining was the cause of the action for theft and recovery of the estate assets. Then, on page 17, lines 6-8 of the same transcript, Ms. Dugger says she entered a nonsuit against Mayforth for debts and recovery of

estate assets. These "estate assets", though never proved to be estate property because Defendants/Appellants were denied cross-examination upon trial, were the actions dismissed by the Plaintiff in nonsuit. The remaining insurance issues had no basis for recovery against Potts and Mayforth, as they neither processed the claim, initiated the claim, nor were found to be responsible for causing the deceased to "sign" a Change of Beneficiary form (quoting the Plaintiff's Complaint). Plaintiff's exhibit to her MOTION FOR SUMMARY JUDGMENT filed April 7, 2000 shows that the form was not signed. (Exhibit B, old and new Change of Beneficiary forms)

Judge advised of Malice and harassment malicious prosecution:

Transcript of November 13, 2000 P. 18, 22-23 - Defendant Mayforth states "the claims she made in her complaint were unfounded and she did not make due diligence in investigating the claims before she filed them" ; NOTICE OF INTENT TO SEEK SANCTIONS, filed Nov. 13, 2000 (Exhibit C, page 1, items 1 and 2), DEFENDANTS MOTION FOR SANCTIONS ....filed October 9, 2000(P.1, item 1 and item 2, P 1 last par-P. 2 first par), DEFENDANTS AMENDED MOTION FOR SANCTIONS... October 30, 2000 (page 3, items 4 and 5), DEFENDANTS RESPONSE TO MOTION FOR PROTECTIVE ORDER, Nov. 17, 2000(page 1,par 2), RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER SETTING HEARING DATE..., Nov. 20, 2000 (page 5, item 12), and in the Transcript of November 13, page 18, lines 14-25.

2. **Related Pleadings:**
We feel that it is necessary for the Court to review all of the items in the PLAINTIFF'S COMPLAINT, September 1, 1999; ORDER OF DISMISSAL WITHOUT PREJUDICE, November 21,2000 and our RESPONSE TO ORDER OF DISMISSAL WITHOUT PREJUDICE, November 22, 2000 to assess the actual basis of the Plaintiff's complaint and the kind of proof necessary to justify such accusations.
Malice and Fraud are displayed in the Transcript record when Ms. Dugger twice states to the Court that there was no response from the Defendants/Appellants to her Motion for Summary Judgment (transcript November 13, 2000, page 6, line 10 and November 27, 2000 page 5, lines 7,8), when we filed a Response in two pleadings- one on November 8 and one on November 20. Ms. Dugger committed Fraud upon the Court in these statements to prejudice the Court against the Defendants/Appellants.

3. **Appellants were prejudiced**:
By the Court Ordering the cancellation of the jury trial scheduled on November 29-30, the Judge stating that there were "no more issues for trial" (ORDER, NOV 30, 2000 P3, par2), the Defendants/Appellants were denied opportunity for defense. By the Court granting Summary Judgment to the Plaintiff; By denying cross-examination of witnesses and facts pertinent to the Defendants/Appellants recovery for damages from Connecticut General Life Insurance for negligence and fraud; and by

having court costs and attorney's fees assessed against them.
The judge erred in assessing costs in the transcript of November 27, 2000 P.17, lines 6-16, where the attorney for the Plaintiff admits nonsuit against Mayforth and Judge Orders Potts and Mayforth to pay costs.

4. **Case References**:

Three elements are required to establish a claim for malicious prosecution: (1) a prior suit or judicial proceeding was brought without probable cause, (2) such prior action was brought with malice, and (3) the prior action was terminated in the plaintiff's favor. [citing Roberts v. Federal Express Corporation, 842 S.W.2d 246-249 (Tenn. 1992).]

B. Appellants held liable for miscarriage of another party:

The Court erred in assessing costs to Defendants/Appellants Potts and Mayforth according to **TCA 29-2-101**, which states that no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person. The Court also erred in not granting the Defendants/Appellants the Declaratory Judgment asked for by the Defendants/Appellants pursuant to **TCA 29-14-101**. It was proved during the course of the case, and it was brought forth before the Court many times by the Defendants/Appellants that the Defendants were charged by the Plaintiff as beneficiaries of an insurance policy with Connecticut General Life Insurance Co. and that the insurance company processed the claim on an unsigned form. It was adjudged by the Court on November 27, 2000 that

because the form was unsigned, the Defendants/Appellants were not the legal beneficiaries of this policy and that the Defendants/Appellants Potts and Mayforth should pay all costs in the suit. We oppose this decision because the action brought by the Plaintiff's complaint and the principal liability incurred by the Defendants/Appellants was due to the miscarriage of Connecticut General. We ask that the Court grant the Declaratory Judgment in the amount of $104,000.00, plus interest, against Connecticut General Life Insurance, in favor of the Defendants/Appellants, and we ask that Connecticut General pay for any and all remaining portions of the court costs and attorneys fees not assessed against the Plaintiff.

1. **Where the facts were brought to the Court's attention:**

Pleadings- ANSWER TO SECOND AMENDMENT TO COMPLAINT, March 30, 2000 (P. 1, First Defense); Motion to Amend Answer to Cross-Claim for Interpleader, April 11, 2000 (P. 1, items 3 and 4); RESPONSE OF MARY POTTS MAYFORTH AND GORDON RAY POTTS, JR. TO PLAINTIFF'S MOTION, May 19, 2000 (P. 1, item 1); RESPONSE OF MARY POTTS MAYFORTH AND GORDON RAY POTTS, JR. in opposition..., June 8, 2000 (P. 2, items 1 and 2); DEFENDANTS RESPONSE TO MOTION OF CONNECTICUT GENERAL..., Nov 20, 2000 (P. 3, item4).

In the Transcript of Nov. 13, 2000, P. 5, 12-25; P 6, 1-7; and P. 7, 14-24.

2. **How Defendants were prejudiced:**

Defendants/Appellants, most specifically Ms. Mayforth, were accused of crimes against the

elderly in connection with this insurance beneficiary issue. Defendants/Appellants were subjected to over one year of legal expenses, harassment, emotional distress and family discord due to the miscarriage of Connecticut General Life Insurance. The Defendants/Appellants were prejudiced by the agreed ORDER issued on December 2, 1999, which was signed in good faith that the Defendants/Appellants were indeed the legal beneficiaries. The protraction of our cause instigated by the deceit and negligent processing of the beneficiary form by Connecticut General Life Insurance Company caused prejudice by the Court against the Defendants/Appellants to the effect that it annoyed and confused the judges in length, jurisdiction and complexity. (ref. Transcript November 27, 2000 P.6, lines 3-4 and List of Pleadings in this Table of Contents)

C. The Judgment was not Molded to the Facts:

That the Trial Court erred in not molding the Judgment to facts as per **TCA 20-6-403**, which says that when there are several defendants, the verdicts and judgments, whether the pleadings by them are joint or several, shall be molded, according to the facts, and to meet the exigencies of the case. The Court erred in failure to incorporate an indispensable party, i.e., Alice E, Nelson, third party defendant, in the proceedings on November 27, 2000 (Plaintiff stated in her witness list that Alice E. Nelson was to be present at the trial on November 29, 2000) and that the court abused its discretion in not allowing the extra 2 days to elapse so that this party, and all the other interested parties having a direct interest in the funds being adjudged could be present. The Court also erred in not

considering all the facts presented in the case as per **TRCP Rule 56**. The Court was apprised in written and verbal pleadings of the Defendants/Appellants many times that there were material facts in dispute and that these disputed facts had not been properly addressed, nor the Defendants/Appellants been given adequate venue to present these disputed facts in their defense. Defendants/Appellants requested a Jury Trial on disputed facts REQUEST FOR JURY TRIAL October 30, 2000 and REQUEST FOR JURY TRIAL November 8, 2000 pursuant to **TCA 21-1-103**, which states that either party to a suit in chancery is entitled, upon application, to a jury to try and determine any material fact in dispute. Defendants/Appellants state that the record indicates that the case was complex, the files were voluminous (a banker's box full), and the Judge was not fully aware of the exigencies of the case, the pleadings, and the evidence when he made the decision for Summary Judgment. We believe that had these issues been presented to a jury that the outcome would have been wholly in the Defendants/Appellants favor and that the Trial Court abused its discretion by preventing this case from going to trial. We ask that the Summary Judgment be reversed.

1. **Where in the transcripts, the Judge has misinterpreted the facts:**

Transcript November 13, 2000:

- P.8 lines 3-10: Judge asks Mr. Keaton if we had filed a cross-claim. Keaton says no. We did file a COUNTER-CLAIM on April 11, 2000.

- P.12 lines 6, 7: Defendant Mayforth states "there are material facts in dispute"
- P.13, lines 8-12: Judge states that the "agreed order" he is enforcing includes allowing Connecticut General to be dismissed from the lawsuit. This "agreed order" was directly controverted by Judge Hull in his Order of October 20, 2000 as being written wrong (by Keaton). It in fact did not include any agreement for Connecticut General to withdraw. It was also not a "settlement agreement" as stated repeatedly by Mr. Keaton, as the only Order made was that the funds be deposited to the court.
- P.16, lines 14,15 Judge says "I have no idea about Sanctions and Contempt" These were the two Motions filed by the Plaintiff that were the only issues actually scheduled to be heard that day. This was pointed out to the Judge on P.17, lines 5-10 by Ms. Mayforth.
- P.19, lines 16-20 Judge is till not clear about what matters are for hearing this date.
- P.20, lines 18,19 Judge cannot find Motion in file
- P.25, lines 1,2,7 and 11 Dugger refers to charging *BOTH* defendants, when only one defendant is named in Motion being heard that date.
- P.26, lines 6-8 Judge is again confused about issues being heard.
- P.28, line 11 Judge does not know that Dugger is referring to the exhibits attached to the Motion in front of him.
- P.31, line 7 Judge does not know what Dugger has asked for in Sanctions- he hasn't read it. He also did not read the Defendant's response.

- P.31, line 13-16 Judge is told by Dugger that Sanctions do not concern Ms. Mayforth.
- P.36, lines 17-21 Ms. Dugger admits that the amounts asked for in Potts Sanction are the same as amounts she has accused both Potts and Mayforth of. The issues obviously concern Ms. Mayforth., then he immediately passes judgment on Gordon Potts, Jr. in
- P.36, lines 22-25 and continued on P. 37, lines 1-4.
- P.37, lines 7,8 Judge says to Mayforth "none of this is against you"
- P.39, lines 3-17 Judge does not understand that Dugger is talking about a request for Jury Trial made by Gordon Potts, Jr. for the Sanctions just imposed, although this is noted by Ms. Mayforth previously in the hearing (P. 16, lines 5-10).
- P.40, lines 10-10 Judge is advised that property awarded in Sanctions belongs to both Ms. Mayforth and Mr. Potts, and then he says it doesn't concern Ms. Mayforth.
- P.41, lines 17-24 Judge is mislead by Ms. Dugger in reasons for canceling deposition. He had ordered in the previous hearing on October 9, 2000 that I attend (see October 9, 2000 transcript P. 16, line 23). Ms. Mayforth did plan to attend, and had advised Ms. Dugger that she planned to attend. Ms. Dugger canceled the deposition without consulting Defendants.
- P.42, lines 10,11 Judge says that the Court halted proceedings. This never happened.
- P.43, lines 12,13 Judge is unsure of disposition of the Complaint with regard to Mr. Potts.

- P.44, line 19 Judge says he will not hear any motions on November 27, 2000 and then hears motions on November 27, 200 anyway.

Hearing Transcript on November 27, 2000:

- P.2, lines 15-17 Judge admits he is confused.
- P.3, lines 8-13 Judge confused about what he ordered 2 weeks prior.
- P.4, lines 12-23 Judge allows Dugger to violate Scheduling Order in regard to insurance issues, when Dugger admitted in her pleading "PLAINTIFF'S RESPONSE TO REQUEST FOR JURY TRIAL, AMENDED MOTION FOR SANCTIONS, POSTPONEMENT OF JURY TRIAL AND ALL OTHER MOTIONS SUBMITTED BY POTTS AND MAYFORTH", filed November 7, 2000 that Defendants had right to postponement on re-filing insurance issues out of Federal Court.
- P.5, lines 7, 8 Dugger misleads Judge by saying that she'd had no response to her Motion for Summary Judgment. Not true, we responded in pleadings filed November 8 and November 20, 2000.
- P.5, Lines 17,18 Keaton misleads Court by stating that he is not involved in the issues, immediately after Dugger talks about the unsigned beneficiary form processed by the insurance company he is representing.
- P.6, line 9 Judge says he was looking at the wrong file.
- P. 7, lines 6-10 Judge neglects to recall that only days earlier he had signed an Order of nonsuit dismissing most of these allegations against Ms. Mayforth and some against Mr. Potts.
- P.8, lines 1-3 Judge grants Motion on the basis that there are no genuine issues of material fact,

despite Ms. Mayforth having stated it in Court on November 13, 2000 (transcript Nov 13 P.12, lines 6,7), and despite the fact that the defendants had stated this in pleadings on April 11, 2000; May 19, 2000; June 8, 2000; Oct. 4, 2000; Oct. 9,2000, Oct.30,2000; Nov 8, 2000; Nov. 13, 2000; Nov. 17, 2000; Nov. 20, 2000 and Nov. 22, 2000

2. How the error was called to the Judge's attention:

Pleadings- DEFENDANTS RESPONSE TO MOTION OF CONNECTICUT GENERAL LIFE FOR ORDER ENFORCING SETTLEMENT AGREEMENT, November 20, 2000, Page 1; Defendants pleadings on April 11, 2000; May 19, 2000; June 8, 2000; Oct. 4, 2000; Oct. 9,2000, Oct.30,2000; Nov 8, 2000; Nov. 13, 2000; Nov. 17, 2000; Nov. 20, 2000 and Nov. 22, 2000

Hearing Transcripts-

Nov. 13, 2000, p. 5, 24-25; P. 9, 14-21; P. 11, 4-6; P. 12, 6-7 (Ms. Mayforth states that the Plaintiff's claims are unfounded and an evidentiary hearing is needed.); P. 18, 14-25; P.22, 1-2; P.37, 9-10; P. 39, 22-25; P.40, 1-3 and 10-16.

3. Appellants were prejudiced by the Court's error:

Defendants/Appellants were prejudiced by having their civil rights violated in not being allowed a defense in accordance with (**TRCP 43.01, TRCP Rule 38, TCS 21-1-103 and US Constitutional Amendment 9**) and in being denied jury trials on the issues ; by being branded liar and thief by the Court (see transcript November 13, 2000, P. 32, Lines 11-22); by being put forth as abusing their

sick, elderly father (transcript November 13, 2000 P. 25, Lines 6-12); by being subjected to slander and false accusations by the Plaintiff without opportunity to defend; by being held financially responsible for the actions of their father (when still alive) in a separation from his wife, by being subjected to harassment and malice from the Plaintiff and her attorney without recourse or compensation, by not being allowed the opportunity to cross-examine or depose witnesses and evidence presented by the Plaintiff, and being subjected to threats of imprisonment and public humiliation (transcript November 13, 2000 P.22, lines 10-15)before the Court.

4. Prejudice of the Judge:

The Trial Judge is under the false impression that Defendant Potts (Chip) is an "educated man" (transcript November 13, 2000, P.32, 22-25 and cont. P.33, lines 1-4), when Chip does not have a high school diploma. The Judge has judged what he perceives to be the quality of character of Gordon Potts Jr. after exclusively reviewing only evidence presented by the Plaintiff and denying the only witness in the courtroom of the events in question to speak. We feel that prejudice of the judge contributed to Summary Judgment without review of the facts. Additionally, Judge Stanley signed probate documents and also the Order bifurcating the insurance issues from the other issues. We refer to the Supreme Court Ethics Committee published opinions concerning the propriety of signing both the probate documents and dispositive Orders in a contested will. We are not suggesting any wrongdoing by Judge Stanley, we are only suggesting that this course may have

prejudiced the Defendants/Appellants.
Disqualification is addressed by Canon 3 E of the Code of Judicial Conduct. Throughout this provision emphasis is repeatedly placed on "disputed" or "controversy" as relates to the proceeding before the judge.

5. Case references:
From Tenn Court of Appeals case # 01A01-9612-CV-00549, Kireyczyk vs. MF Athletic Club, 1997:
The court must view the evidence in the light most favorable to the opponent of the motion for summary judgment. Haynes v. Hamilton County 883 S.W.2d 606 (Tenn. 1994).
All reasonable inferences from the evidence must be drawn in favor of the nonmoving party. Pittman v. UpJohn Company 890 S.W.2d 425 (Tenn. 1994).
There is no presumption of correctness to the trial courts findings in a summary judgment case. Carvell v. Bottoms 900 S.W.2d 23 (Tenn 1995). **If any doubt or any uncertainty exists with regard either to the facts or to the conclusions to be drawn to the facts, the summary judgment order must be vacated and the case remanded for trial.** Byrd v. Hall 847 S.W.2d 211 and Evco v. Ross 528 S.W.2d 20.

> Reference the position as is taken by Chief Justice Rehnquist writing for the majority in *Celotex:*
> "The burden of production imposed by Rule 56 requires the moving party to make a prima facie showing that it is entitled to summary judgment. 10A Wright §2727. The manner in which this showing can be made depends upon which party will bear

> the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion at trial, that party must support its motion with credible evidence--using any of the materials specified in Rule 56(c)--that would entitle it to a directed verdict **if not controverted at trial**.. Ibid. Such an affirmative showing shifts the burden of production to the party opposing the motion and requires that party either to produce evidentiary materials that demonstrate the existence of a **'genuine issue'** for trial or to **submit an affidavit requesting additional time for discovery**. Ibid,; **Fed Rules Civ Proc 56(e), (f).**

...and,

Where the moving party adopts this second option and seeks summary judgment on the ground that the nonmoving party--who will bear the burden of persuasion at trial--has no evidence, the mechanics of discharging Rule 56's burden of production are somewhat trickier. Plainly, **a conclusory assertion that the nonmoving party has no evidence is insufficient.** See ante, at 328. 91 l Ed 2d, at 277 (White, J., concurring). **Such a 'burden' of production is no burden at all and would simply permit summary judgment procedure to be converted into a tool for harassment.** See Louis 750-751. Rather, as the Court confirms, a party who moves for summary judgment on the ground that the nonmoving party has no evidence must affirmatively show the absence of evidence in the record. Ante. At 323, 91 l Ed 2d, at 273. This may require the moving party to depose the nonmoving party's witnesses or to establish the inadequacy of documentary evidence. If there is literally no

evidence in the record, the moving party may demonstrate this by reviewing for the court the admissions, interrogatories, and other exchanges between the parties that are in the record. Either way, however, the moving party must affirmatively demonstrate that there is no evidence in the record to support a judgment for the nonmoving party." All reasonable inferences from the evidence must be drawn in favor of the nonmoving party. Pittman v. UpJohn Company 890 S.W.2d 425 (Tenn. 1994). There is no presumption of correctness to the trial courts findings in a summary judgement case. Carvell v. Bottoms 900 S.W.2d 23 (Tenn 1995). **If any doubt or any uncertainty exists with regard either to the facts or to the conclusions to be drawn to the facts, the summary judgement order must be vacated and the case remanded for trial.** Byrd v. Hall 847 S.W.2d 211 and Evco v. Ross 528 S.W.2d 20.

D. Hearing of the Summary Judgment untimely:

The court erred in granting the hearing on November 27, 2000 of the Plaintiff's Motion for Summary Judgment in that: 1) It was in violation of the SCHEDULING ORDER issued August 29, 2000, and in contradiction to the Court's Order of November 13, 2000, where the Judge states that "we will not hear any motions on the 27th" (transcript Nov. 13, 2000 page 44, line 19); 2) The Federal Court's ORDER of October 20, 2000 (Exhibit D) did not support the claims made by the Plaintiff and Connecticut General that there was any Order from the Federal Court which stated that Connecticut General should be allowed to withdraw after depositing the funds without further liability. 3) The Plaintiff had failed to produce discovery or witnesses, or to present herself for cross-examination as requested by

Defendants/Appellants; 4) Defendants/Appellants had noted to the Court the need for additional time for Discovery; and 5) The Federal Court Issued a non-jurisdictional Order and Defendants should have had one year to re-file the issue pursuant to **TCA 28-1-115**. 6) Defendants/Appellants were not given sufficient time to respond per **TCA 28-1-111**.

1. **How the error was called to the Judge's attention:**

   Violation of Scheduling Order:

   Pleadings- SCHEDULING ORDER , August 29, 2000(P. 2, item 10); DEFENDANTS MOTION TO DISMISS PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, November 8, 2000, Page 1, Par. 1; DEFENDANTS RESPONSE TO MOTION OF CONNECTICUT GENERAL LIFE FOR ORDER ENFORCING SETTLEMENT AGREEMENT, November 20, 2000, P.4, item 6: That Defendants were not given 30 days notice before a hearing. The Motion was filed November 3, 2000 and set for hearing on November 27, 2000; exhibits filed on November 6, 2000. Hearing on this Motion was also scheduled within 2 days of a jury trial set for the case and this is in conflict of the Scheduling Order of August 29, Item 10, which states that all Motions will be heard no later than 10 days before trial.

   Also in Defendants Response to Motion:

   Rule 56 of the Tennessee Rules of Civil Procedure provides in pertinent part as follows:

   56.03 Motion and Proceedings Thereon. The motion shall be served at least thirty (30) days before the time fixed for the hearing,

   and :

   Tenn Code of Civil Procedure states in 28-1-111.

Other pleadings and hearings in which called to the attention of the Judge:

DEFENDANT'S RESPONSE TO MOTION OF CONNECTICUT GENERAL LIFE FOR ORDER ENFORCING SETTLEMENT AGREEMENT, Nov. 20, 2000, Page 2, item 3, continued on page 3; Page 3, item 4; and Page 4, item 6 ; DEFENDANTS RESPONSE TO ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO PART OF PLAINTIFF'S CLAIM FOR RELIEF..., Nov. 22, 2000, Page 2, item 3; Defendants AMENDED MOTION FOR SANCTIONS..., Oct. 30, 2000, Page 2, item 3, continued on page 3; and in the Transcript- November 13, 2000, P. 43, 19-23.

Order from the Federal Court:

Pleadings where we called attention to this: MOTION FOR CONTINUANCE OF HEARING SCHEDULED NOVEMBER 27... November 13, 2000, P. 1, item 4; DEFENDANT'S RESPONSE TO MOTION OF CONNECTICUT GENERAL LIFE FOR ORDER ENFORCING SETTLEMENT AGREEMENT, Nov. 20, 2000, Page 3, top of page; DEFENDANTS RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER SETTING HEARING DATE... Nov. 20,2000, Page 2 item 3.

Additional discovery needed:

Pleadings- AMENDED MOTION FOR SANCTIONS AND MOTION FOR SUMMARY JUDGEMENT IN FAVOR OF DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR., October 30, 2000,Page 2, Par. 4:

The material facts in dispute are the allegations contained in the Motion for Sanctions filed by the Defendants, in proper person, on October 9, 2000 in this court and the amended Motion filed by the Defendants on October 30, 2000 and contained

herein. The allegations made in this document are that the Plaintiff, Pearl Lynell Potts, lied in the Complaint filed by the Plaintiff and that the Plaintiff and her attorney, Ms. Dugger, have proceeded in a manner adverse to the execution of due process by not allowing Defendants the opportunity to cross-examine witnesses and evidence crucial to the execution of justice, and by repeatedly filing Motions for Contempt and Summary Judgment with the purpose of denying Defendants a fair and impartial hearing.

Page 2, Item No.

1) Defendants additionally state that the attorney for the Plaintiff, Kathryn Dugger, canceled the scheduled Deposition of her witness, Dr. Harrison Turner, without the permission or agreeance of the Defendants and has not responded to requests to re-schedule or call as witness Dr. Harrison Turner for discovery by the Defendants at a time agreeable to both Plaintiff and Defendant. Defendants ask that Dr. Harrison Turner be presented for discovery or that he issue an affidavit retracting the opinion issued in his letter to Ms. Dugger that she has entered as evidence.
2) Defendants additionally state that Kathryn Dugger has not responded to requests from the Defendants for the deposition of the Plaintiff, Pearl Lynell Potts, and has sought to prevent cross-examination of this witness by repeatedly asking for Summary Judgments and Sanctions. Defendants ask that Pearl Lynell Potts be presented to Defendants for discovery as a witness at this trial and at a comprehensive jury trial.

Transcript October 9, 2000- P.15, 21-23; Transcript November 13, 2000, P. 5, 1-4.

2. **Appellant was prejudiced by the Court's error:**

The Plaintiff's attorney, Kathryn Dugger used process for other than which it was intended- as a blockade for a fair and impartial trial, and as a "smoke screen" to obscure from justice the revelation of the truth. By this abuse of process, the Plaintiff and her attorney managed to levy false accusations against the Defendants, collect money from the defendants for litigating these false accusations, and get away without a judge or jury ever hearing opposing facts or testimony from witnesses or the parties in interest.

3. **Law and Case references:**

Defendants state that the action dismissed for lack of jurisdiction in Federal Court falls under Section **28-1-115** of the Tennessee Civil Code and Defendants should be allowed up to one year to file this action in State Court. Defendants note that Summary Judgment is not a substitute for the trial of disputed factual issues. Ref: *Taylor v. Nashville Banner Publishing Co.*, Tenn. App. 1978, 573 S.W.2d 476; Cert. Den. 441, U.S. 923, 99 S.Ct. 2032, 60 L.Ed.2d 396; *Gonzales v. Allman Constr. Co.*, Tenn. App. 1993, 857 S.W.2d 42.

TRCP Rule 56 provides in pertinent part as follows:

56.03 Motion and Proceedings Thereon. The motion shall be served at least thirty (30) days before the time fixed for the hearing. The adverse party prior to the day

of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Abuse of Process:

We have set forth many examples within this Brief as to Malicious Prosecution and Abuse of Process. We have brought these abuses to the attention of the Court in several pleadings filed during the months of October and November, 2000. (Exhibits A and C and in our MOTION FOR SANCTIONS) We believe that the ulterior motive in abusing process was to avoid cross-examination of the Plaintiff and the Plaintiff's witnesses; and to avoid Sanctions against the Plaintiff and Ms. Dugger for Malicious Prosecution. We do not believe that a Summary judgment two days before Jury Trial was a customary or proper use of process.

Case References:

To establish a claim for abuse of process in Tennessee, two elements must be alleged: "(1) the existence of an ulterior motive; and (2) an act in the use of process other than such as would be proper in the regular prosecution of the charge." Priest, 174 Tenn. at 307, 125 S.W.2d at 143 (internal quotations and citations omitted); 1 Am. Jur. 2d Abuse of Process § 5 (1994)

" The test as to whether there is an abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process." Priest, 174 Tenn. at 306, 125 S.W.2d at 143 (emphasis added) (internal citations and quotations omitted)

II. UPON DEFAULT JUDGMENT AND SANCTIONS AGAINST APPELLANT

A. Lack of due process, amount of Sanctions inappropriate:

1) That the Court erred in granting Default Judgment on November 13, 2000 as per **TRCP Rule 55**. Appellants were not served with a written notice of application for judgment thirty days before the hearing. 2)Application for Sanctions against one party was made, yet the amount awarded was stated several times to be the property of three of the defendants, and the other two defendants who were deprived of property in this judgment were not allowed opportunity to defend. The court abused its discretion and showed prejudice in issuing the Default Judgment and we ask that this be aside and the award reversed per **TCA 29-6-161** "Nonresident setting aside default judgment." 3) Defendants were denied a jury trial on this issue, as requested and pursuant to **TCA 21-1-103**, " Right to trial by jury", jury trial should have been granted on the material facts in dispute. 4) Evidence by Defendants that was presented was not considered in this Judgment 5) The trial Court judge prohibited the primary witness to the alleged "theft" opportunity to present further evidence or testimony. It was stated in the Defendants/Appellants Response to the Motion for Sanctions that Mary Mayforth was the only defendant in the presence of her father during the timespan that the

events in the Plaintiff's Complaint allegedly occurred 6) The action filed was inappropriate to the relief granted. Said Default Judgment was, in effect, a Summary Judgment against two of the defendants not charged with Sanctions. Appellants rely on **TRCP Rule 56,** which states that Summary Judgment must be viewed with the interests of the defendants, and that no material facts must be in dispute. Appellants also state that this was a defective verdict and was objected to before the judgment was entered as per **TCA 20-11-103** (see transcript November 13, 2000 Page 40, lines 14-16). Additionally, we will address later on in this brief how Kathryn Dugger committed Fraud upon the Court in obscuring crucial information, deliberately misleading the Court, obstructing justice, and by abuse of process in obtaining this Judgement.

1. **Where this was called to the Court's attention:**
   Funds being property of multiple defendants:
   AMENDED MOTION FOR SANCTIONS AND MOTION FOR SUMMARY JUDGEMENT IN FAVOR OF DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR., October 30, 2000,Page 3, Item No 5:
   "Defendants attach evidence herein showing that the funds transferred to Gordon R. Potts, Jr., the same funds that the Plaintiff accuses the Defendant of concealing, are the rightful property of Mary Potts Mayforth, Gordon R. Potts, Jr. and Alice Elizabeth Potts and that an outstanding balance of educational funds in excess of $15,000.00 is still due the Defendants as a debt of the estate of Mr. Potts, Sr."
   The amount awarded in this judgment matches exactly the amounts the Plaintiff's attorney itemized to the court as being the same amount the Plaintiff accuses

Mary Potts mayforth and Gordon R. Potts, Jr. of stealing in her Complaint. (reference PLAINTIFF'S COMPLAINT, September 1, 1999 and November 13 transcript page 36, lines 10-21.)These funds were contested by Defendants/Appellants as being legally transferred to them in repayment of a debt owed to the three biological children of the owner of these funds. (Exhibit E) and Transcript, November 13, P. 40, 19-20. Attorney Dugger maintained accusations against both Defendants Potts *and* Mayforth throughout the Sanctions hearing in which the Default Judgment was issued and misrepresented the facts to the Court of what actions she asked to be sanctioned. In the November 13, 2000 transcript page 25, lines 10-12, she says that both Mary and Chip are accused of stealing the money she asks for in Default Judgment, then on page 31, lines 13-16 she says the Sanctions do not concern Mary, then on page 36, lines 10-21, she says that the amount of the award for Sanctions and Default Judgment she is asking for is the same amount both Defendants are accused of stealing in her client's Complaint. In the same transcript on page 25, lines 20-21, she tells the Judge that Sanctions are for failing to supply records, then on page 26, lines 15-17, she says that Sanctions are for lying on interrogatories, then on page 29, lines 22-23, she says Chip had the money but wouldn't tell her, then she says on page 36, lines 20-21 that "they" denied having the money. (Chip's Answers to Interrogatories admitted to receiving $20,000.00 - to the best of his knowledge at the time the Interrogatories were answered);

2. How Defendants/Appellants were prejudiced: Three Defendant were deprived of property in the DEFAULT JUDGMENT issued at the November 13, 2000 hearing. Important material evidence crucial to

the defense was blocked from presentation at this trial. The Court erred and displayed prejudice by not granting a jury trail on disputed material facts as requested in the Defendants/Appellants REQUEST FOR JURY TRIAL filed November 8, 2000. Ms. Dugger abuses process in this instance by use of objecting to a jury trial (PLAINTIFF'S RESPONSE TO REQUEST FOR JURY TRIAL..., November 7, 2000 P. 1, items 1 and 2) and in the hearing on November 13, 2000 (Transcript P. 31, 3-6 and P. 39, 12-17)

3. **Case references:**
   An evidentiary hearing is necessary in sanction cases where there are disputed facts or issues of credibility. *Chemiakin v. Yefimov*, 932 F.2d 124, 130 (2d Cir. 1991); *also see Didie v. Howes*, 988 F.2d 1097, 1105 n. 8 (11th Cir. 1993)

B. Action filed inappropriate, Malicious Prosecution and Abuse of Process, Sanctions excessive and not molded to fact or testimony:

There was no theft proved and no dementia of the deceased was proved, which was the Plaintiff's justification for the allegation of theft, therefore, the evidence did not justify the Sanctions. (Gordon R. Potts Jr. INTERROGATORIES AND ANSWERS TO INTERROGATORIES Exhibit F-1) , Gordon R. Potts, Jr. Response to Motion for Sanctions in REQUEST FOR JURY TRIAL, October 30, 2000, and, defendants MOTION FOR SANCTIONS AGAINST PEARL LYNELL POTTS, KATHRYN DUGGER.., October 9, 2000. Ms. Dugger states to the Court in the transcript of November 13, 2000, page 25, lines 20-21 that her

Sanctions are filed on the basis that Discovery was not provided as per Court Order, but on page 33, lines 20-21 she admits that she has everything pertinent to her lawsuit, then on pages 34 and 35 of this transcript she admits to asking for items in discovery that may not even exist (p.35, line 2). In fact, all the discovery items asked for were produced before this hearing and there was no justifiable cause in awarding over $36,000.00 in Sanctions against someone for the slow production of 3 discovery items, given that the person being sanctioned had notified the Plaintiff's attorney and the Court (defendants MOTION TO INCORPORATE PLEA FOR WITHDRAWAL WITH CONTEMPT AND..., October 4, 2000, Pages 1 and 2, items 1-8) of valid reasons why they were not produced sooner. Default Judgment is inappropriate to this situation pursuant to **TRCP Rule 55,** which states that "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, judgment by default *may*[1] be entered as follows:

The party entitled to a judgment by default shall apply to the court. All parties against whom a default judgment is sought

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[1]We find it appropriate to note that the use of "may" rather than "shall" indicates that entry of a default judgment is discretionary rather than mandatory.

shall be served with a written notice of the application for judgment at least thirty days before the hearing on the application, regardless of whether the party has made an appearance in the action." (emphasis added.)

1. Where the error was called to the Judges attention:
Pleadings:
Defendant/Appellant Potts', Response to Motion for Sanctions in REQUEST FOR JURY TRIAL, October 30, 2000; Defendants MOTION FOR SANCTIONS AGAINST PEARL LYNELL POTTS, KATHRYN DUGGER.., October 9, 2000; RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER SETTING A HEARING DATE FOR MOTION OF SUMMARY JUDGMENT, November 20, 2000, top of page 5: "Although the Plaintiff's Motions were partially disguised as "Sanctions" against only *one* Defendant, the Plaintiff's Complaint accused *both* Defendants of fraudulent transfer of this money. Therefore, a judgment for Sanctions against *one* Defendant was effectively a Summary Judgment against *more than one* Defendant. Mary Mayforth, the other Defendant accused by the Plaintiff in her Complaint, and the only Defendant who was actually in the deceased's presence during the time that the Plaintiff claims that *ALL* of the monies mentioned in her Complaint were transferred (including the time that the deceased left Tennessee with these funds and up to the last moment of the deceased's life) was denied opportunity in court to rebut or present evidence or testimony, even though she attempted to do so before all of the monies were awarded to the Plaintiff."
Discovery not violated:
DEFENDANT'S RESPONSE TO MOTION FOR CONTEMPT FILED SEPTEMBER 20, 2000 filed November 13, 2000,Page 2 item 6 :

"The Plaintiff issued a change of address form diverting the Defendant's mail to her address during the time that the Defendant's bank statements for July and August 1999 should have been received in an attempt to divert the deceased father's mail, and both the deceased and the Defendant (his son)bear the same name. Defendant has asked in Discovery placed to Plaintiff for documentation relating to this change of address, but it has yet to be provided by the Plaintiff. Defendant is dependant upon the Plaintiff in this case to provide the material evidence in dispute, because it is proprietary to the Plaintiff's mail request.

Defendant has asked in Discovery placed to Plaintiff for documentation relating to this change of address, but it has yet to be provided by the Plaintiff. Defendant is dependant upon the Plaintiff in this case to provide the material evidence in dispute, because it is proprietary to the Plaintiff's mail request."

Page 3 item 6:

"The vaguary with which the Plaintiff's attorney has worded almost every document she has filed in this case are called into question, as her motives seem to indicate the "shotgun" method of filing complaints, expecting the proof of such complaints upon discovery."

Theft of funds:
In the transcript of October 9, P. 14, 19-23 Ms. Mayforth is speaking and Mr. Potts is at the Defense table when Ms. Mayforth tries to bring forth the issue of theft with regard to Sanctions and attorney TimMcConnell's withdrawal, but the judge will not allow it. In Defendants AMENDED MOTION FOR SANCTIONS AND MOTION FOR SUMMARY JUDGEMENT IN FAVOR OF DEFENDANTS

MARY POTTS MAYFORTH AND GORDON R. POTTS, JR. October 30, 2000,Page 3, Item No. 5, we state that:

"Defendants attach evidence herein showing that the funds transferred to Gordon R. Potts, Jr., the same funds that the Plaintiff accuses the Defendant of concealing, are the rightful property of Mary Potts Mayforth, Gordon R. Potts, Jr. and Alice Elizabeth Potts and that an outstanding balance of educational funds in excess of $15,000.00 is still due the Defendants as a debt of the estate of Mr. Potts, Sr."

In Defendant/Appellant Potts', Response to Motion for Sanctions in MOTION TO INCORPORATE PLEA FOR WITHDRAWAL...October 4, 2000, Page 2, Items 6 and 7, we explain how the funds were transferred.

DEFENDANTS RESPONSE TO MOTION FOR PROTECTIVE ORDER filed November 17, 2000,Page 3,item 4:

"There was no theft proved because no evidence of theft was presented, as the Plaintiff avers that this theft was by coercion and Gordon R. Potts Jr. was 2000 miles away when this money was withdrawn by the deceased *and* when the checks were endorsed by him."

DEFENDANT'S RESPONSE TO MOTION FOR CONTEMPT FILED SEPTEMBER 20, 2000,Bottom of Page 2 continued on page 3:

"Communications between the Defendant's attorney, Tim McConnell and Plaintiff's Attorney, Kathryn Dugger in regard to any missing documentation were in err, as they referred to multiple bank accounts, and did not accurately describe exactly what the Defendant was expected to provide with regard to missing documents.

Evidence filed by the Plaintiff on September 27, 2000 in attachment to her Motion for Sanctions shows that even the bank employees erred when referring to two accounts opened at different times with a six week gap in between as being the same account. Plaintiff's attorney continues this err."

Plaintiff denied Defendant ample time to produce copies of documents with regard to **TCA 28-1-111.**

Default Judgment not appropriate in General. **TRCP Rule 55,** which states that "When a party against whom a judgment for affirmative relief is sought has **failed to plead or otherwise defend** as provided by these rules and that fact is made to appear by affidavit or otherwise, judgment by default *may*[2] be entered as follows:
We state that there was indeed a defense, both in pleadings and attempted in hearing. The case that Ms. Dugger used to justify Default Judgment was Shahrdar v. Global Housing, 983 S.W.2d 230, Tenn. 1998. The case for Default Judgment was nothing like this case, in that the Defendant in Shahrdar v. Global had completely ignored Interrogatories for 17 months. Ms. Dugger used this Default Judgement through abuse of process and Fraud upon the court to gain Summary Judgment for non-insurance portion of her case. On September 28, 2000 Ms. Dugger send copies of cancelled checks

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[2]We find it appropriate to note that the use of "may" rather than "shall" indicates that entry of a default judgment is discretionary rather than mandatory.

to Defendants/Appellants attorney, Tim McConnell, endorsed by South Padre Bank that she had received almost one year ago from TI Federal Credit Union, (transcript Oct. 9, 2000, P. 12, 17-21) and used this as a "trump card" to force McConnell's withdrawal and gain advantage over Defendants by strategically witholding this evidence. We think that this demonstrates that Ms. Dugger withheld this discovery information for many months in order to entrap Defendant/Appellant Potts for the Sanctions and Default Judgment. The Interrogatories were intentionally worded in a context which asked knowledge of facts that *only the Plaintiff* had knowledge of (Exhibit F-1, Interrogatories). Ms. Dugger used Discovery as a tool to entrap, not as a tool for information.

Case references:

abuse of process:

Case Reference: Brooks v. United Uniform Co., 682 S.W.2d 913, 915 (Tenn. 1984). "For an abuse of process claim in Tennessee, two elements must be alleged: "(1) the existence of an ulterior motive, and (2) an act in the use of process other than such as would be proper in the regular prosecution of the charge." Priest v. Union Agency, 174 Tenn. 304, 306, 125 S.W.2d 142, 143(1939). Abuse of process lies "for the improper use of process after it has been issued, not for maliciously causing process to issue." Priest, 174 Tenn. at 306; 125 S.W.2d at 143."

The ulterior motive for the Plaintiff was to deprive her stepchildren of monies given them by their father and

to get revenge upon them for helping their father after he left the Plaintiff. The ulterior motive for the Plaintiff's attorney, Ms. Dugger was to prevent closer examination of the Plaintiff's accusations and to circumvent due process by preventing these issues from going to trial, where cross-examination of witnesses might negatively affect her client's success.

The improper use of process lies in the fact that Ms. Dugger drafted the interrogatories to the Defendants/Appellants with such vaguaries as "what happened to...(this money)", with the knowledge that the money was withdrawn from banks in Tennessee by the deceased when the Defendants were not present, and that Gordon Potts Jr. was not around his father from the time that his father left Tennessee until he died. While Defendant/Appellant Potts admitted to having received some money from his father, he stated in his response to the Plaintiff's Motion for Sanctions that the *Plaintiff* had sent in change of address forms which diverted some of Chip's mail to the *Plaintiff*, specifically during the time when the bank statements should have arrived. So, Ms. Dugger charges Sanctions against Defendant Potts for not producing documents that *her client* had. Had Ms. Dugger timely provided copies of the checks cashed in South Padre that she received *before* issuing the Interrogatories, Defendant Potts would have had some written proof of what was put into his bank account rather than relying on memory to answer. The plain fact is that Ms. Dugger knew "what happened" to the money long before she even issued the Interrogatories, and she and the Plaintiff were the only people in possession of complete records required to answer the Interrogatories posed to the Defendants/Appellants. Ms. Dugger shows Malice and Harassment in the fact that, although all

of the discovery was eventually produced before this hearing date, Ms. Dugger still proceeded on the Sanctions.

Sanctions excessive:

From TN Court of Appeals Western Section Case# 02A01-9803-CV-00082, August, 1998, Cable Connection Inc, et al v. Memphis Publishing Co.: Bottom of Page 4, cont on Page 5:

"Contrary to the trial court's order, the Appellants did in fact respond to the discovery request. Furthermore, regardless of the Appellee's assertion that the Appellants' answers to the interrogatories were inadequate and evasive, there was no hearing to determine whether this was the case. In the absence of such a finding and in light of the fact that the Appellants did respond to the interrogatories, the trial court abused its discretion in imposing this particular sanction on the Appellants."

2. How the Defendants/Appellants were prejudiced by the decision:

Defendants/Appellants were deprived of property without due process, their civil rights violated, Chip was branded as a criminal without the benefits of criminal or civil process in proving his innocence [see transcript Nov. 13, 2000 Pages 32 and 33 for the harsh words of the Judge about Gordon R. Potts, Jr. Defendants/Appellants were caused loss of work time. Appellant's were in fear of fear of unjust imprisonment due to the prejudice shown by the court. Deprived of evidence needed for further actions- the evidence that was prohibited from being heard was key to the proof of malicious prosecution in this case and affected the final outcome and ability of Defendants/Appellants to recover from the Plaintiff for malice and harassment. Defendants/Appellants were deprive of their rightful inheritance. Defendants/Appellants subjected to large

financial losses from litigation costs. We were also prejudiced by the fact that the Court erred when dismissing the remaining actions in the suit on November 27, 2000 and canceling the Jury Trial scheduled for two days later. Appellants state that all of the issues had not been adjudicated and had notified the Court that they would appear for this jury trial, and had scheduled a Court Reporter for this jury trial. Appellants refer to **TRCP Rule 41**, which states that the Court shall reserve ruling until all parties alleging fault against any other party have presented their proof-in-chief. That the Court erred in not granting a continuance for the Jury Trial Scheduled on November 29-30, 2000; and by allowing hearings to be docketed at short notice (or no notice) to defendants, as they are out-of-state residents, and the time of residence out of state should not be taken as part of any time limited for commencement of said actions. Appellants refer to **TCA 28-1-111**.

C. **Prejudice by Court against Defendants/Appellants**: The Court erred by showing prejudice against the Defendants Appellants in the following: 1)Refusing to grant evidentiary hearing or jury trial, 2) Not allowing out of state resident to testify via telephone, 3) Not reviewing the evidence presented by the Defendants/Appellants in their response. 4) Not allowing Mary Mayforth to testify 5) Prejudicial treatment of Defendants/Appellants in hearings.

1. **How the error was called to the Judge's attention**: Pleadings- REQUEST FOR JURY TRIAL, October 30,2000 and November 8, 2000, DEFENDANTS RESPONSE TO MOTION OF CONNECTICUT GENERAL LIFE FOR ORDER ENFORCING SETTLEMENT AGREEMENT, November 20, 2000,Page 3, Par 2:

"From the United States Constitution, Amendment 9, Section 1. Citizenship - Due process of law - Equal protection

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

AMENDED MOTION FOR SANCTIONS AND MOTION FOR SUMMARY JUDGEMENT IN FAVOR OF DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR., October 30, 2000, Page 2, Par.3: We cite **TCA 21-1-103. "**Right to trial by jury".

DEFENDANTS RESPONSE TO MOTION FOR PROTECTIVE ORDER, November 17, 2000, Page 3, item 4:

"The Plaintiff has been shown overwhelming prejudice in her favor by repeated rulings in the her favor, the Court's refusal to allow Defendants more than 30 days to hire new counsel based on the size and scope of the case and time needed for review before trial, refusing a continuance of the final jury trial, refusing to allow Defendants to present evidence in their defense before ruling on Motions, refusing to grant jury trials for significant criminal issues with material evidence in dispute, and summarily judging all of the main issues of the Plaintiff's Complaint without notice being given to Defendants."

Page 3 item 4

> "Mary Potts Mayforth, the only Defendant present at the time that the deceased had transferred some of these funds, was threatened with jail time on November 13, 2000 for trying to present facts or witness against the Plaintiff's claim of Theft by coercion....continued on page 5: Defendant Gordon R. Potts Jr. requested in writing to appear via telephone on November 13, 2000, as he had traveled approx 3000 miles to and from Tennessee for the hearing October 9 and he had no more leave time accrued from his work. This request was denied. The Plaintiff's attorney was allowed to present her side of the case, and judgment was issued without allowing Defendants to present witnesses or evidence in their defense, using documents already in the court files and testimony from witnesses present in the courtroom."

DEFENDANTS RESPONSE TO ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO PART OF PLAINTIFF'S CLAIM FOR RELIEF AS TO DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR. (being filed in lieu of a Response, as the Plaintiff issued no originating Motion) filed November 22, 2000,Page 3, item 3 (cont):

> "Scheduling restrictions pertaining to the SCHEDULING ORDER were also specifically noted in Par. 8 of another Order signed ON THE SAME DAY that this Order for Dismissal was signed."

Transcript references:

> November 13, 2000 transcript- P. 6, line 10 where Ms. Dugger states that there had been no response to her MOTION FOR SUMMARY JUDGEMENT filed April 7, 2000. We responded twice to this. November 13, 2000 transcript P.7, 6-8 where Mr.

Keaton misleads the Court as to omitting that his Motion included the withdrawal of his client without penalties., P. 8, 2-10 where Mr. Keaton misleads the Court concerning our cross-claim; P.9, 5-10 where Ms. Mayforth states that she is not representing her brother and Ms. Dugger asks for the judge to rule on the status of Ms. Mayforth acting as her brother's attorney again on P.15, line 24 ; P.12, 6-7 Ms. Mayforth states that there are material facts in dispute; P. 22, 10-15 where the Judge tells Ms. Mayforth to "zip your lips" or he'll call the bailiff; P. 25 1-7, where Ms. Dugger accused both parties of theft, and then asks for Default Judgment against Defendant/Appellant Potts for theft on P. 36, 10-15 and disguises this as a Sanction for discovery.

2. **Appellant was prejudiced by the Court's error:**
   Defendants/Appellants were deprived of property without due process, their civil rights violated, Chip was branded as a criminal without the benefits of criminal or civil process in proving his innocence [see transcript Nov. 13, 2000 Pages 32 and 33 for the harsh words of the Judge about Gordon R. Potts, Jr. Defendants/Appellants were caused loss of work time. Appellant's were in fear of fear of unjust imprisonment due to the prejudice shown by the court. Defendants/Appellants were deprive of their rightful inheritance. Defendants/Appellants subjected to large financial losses from litigation costs.

3. **Law and Case References:**
   U.S. Constitution Amendment 7:
   "In suits at common law, where the value in controversy shall exceed twenty dollars [$20.00],

the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law".

4. **The Court erred in not considering Defendants claims of abuse of process and Malice and in denying Defendants MOTION FOR SANCTIONS on these grounds:**

Pleadings- DEFENDANTS RESPONSE TO MOTION FOR PROTECTIVE ORDER November 17, 2000, Page 3, item 4:

"Ms. Dugger and her client were well aware that Mary was the *only* Defendant in proximity to the deceased at the time these checks were signed over who could testify as to whether or not signatures were coerced."

MOTION FOR SANCTIONS AGAIST PEARL LYNELL POTTS AND KATHRYN DUGGER..., Oct 9, 2000 and AMENDED MOTION FOR SANCTIONS... October 30, 2000;

Transcript references- November 13, 2000 transcript, P. 18 14-25

Case references:

Tenn. R. Civ. P. 11 responds to the well-publicized problems caused by overcrowded dockets and pre-trial cost and delay.[3] It reminds lawyers that their duty to their client does not outweigh their duty to their adversaries and to the justice system itself. *City of East St. Louis v. Circuit Court for the Twentieth*

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[3]Debbie A. Wilson, Note, *The Intended Application of Federal Rules of Civil Procedure 11: An End to the "Empty Head, Pure Heart" Defense and a Reinforcement of Ethical Standards*, 41 Vand. L. Rev. 343, 343-44 (1988).

Judicial Circuit, 986 F.2d 1142, 1143 (7th Cir. 1993); *In re Ronco, Inc.*, 105 F.R.D. 493, 497 (N.D. Ill. 1985). Its principle goal is to improve lawyers' behavior,[4] and it accomplishes this goal by providing an economic deterrent against filing complaints and other papers that are not reasonably based in law or in fact. *Con-Tech, Inc. v. Sparks*, 798 S.W.2d 250, 253 (Tenn. Ct. App. 1990).

Law and Case references:

TRCP Rule 11:

5. It must be demonstrated, as the basis of pre-filing investigation and research, that there is a REASONABLE BASIS to name each defendant named, and to support each claim asserted. The shotgun complaint or answer, filed in the hope that discovery will produce the justification for it, is improper.

US ConstitutionAmendment 9:

Section 1. Citizenship - Due process of law - Equal protection

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of** life, liberty, or **property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws.

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[4]5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1331, at 19 (2d ed. 1990).

"[a]n essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 1493, 84 L. Ed. 2d 494, 503 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656, 94 L. Ed. 865, 873 (1950)); *Gay v. City of Somerville*, 878 S.W.2d 124, 129 (Tenn. Ct. App. 1994).

III. Upon Malicious Prosecution and Abuse of Process:

That the Trial Court erred in allowing the Plaintiff, Pearl Lynell Potts to bring action against Mary Potts Mayforth and Gordon R. Potts, Jr. for actions committed by their father while he was alive. Appellants refer to **TCA 29-2-101**, which states that no action shall be brought to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; and that no action shall be brought to charge another person upon any agreement made upon consideration of marriage. Appellants maintain that the property transferred to them by their father was transacted by the free will of the deceased prior to his death in a separation from the Plaintiff and that the Plaintiff's claims that this property belongs to the estate is false.

1. **How the error was called to the Judge's attention:**
   Harrassment by the Plaintiff, Malice and Fraud: RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER SETTING A HEARING DATE FOR MOTION OF SUMMARY JUDGMENT, November 20, 2000:

This entire document has references to malicious prosecution. Defendants/Appellants submitted exhibits to this pleading that include taped messages from the Plaintiff to Defendants/Appellants and on Page 5, item 12, we elaborate upon the contents of the tape:
"That this Motion and others filed for and by the Plaintiff are a continuation of the Harassment of the Defendants by the Plaintiff and further evidence of malicious prosecution. Plaintiff is angry because her husband left her and is taking this out on the Defendants. Defendants enclose a copy of taped phone messages left to them by the Plaintiff in which she says to Mary Mayforth "you have done nothing but try to break up our marriage", and "I will never call this frickin' number again" (then she calls back several times, anyway); Plaintiff also admits that her calls are annoyance and admits to throwing family pictures in the trash and tearing the house apart. Further statements made on this tape by the Plaintiff are: " I can sue the very hell out of you", "I won't ever call your number again" (second time she says this and then calls again), "Don't be sitting back and thinking I'm doing nothing- I've been doing plenty and you're in for it!"; "He never does anything but sit on his ass and watch TV" (when referring to her terminally ill husband), "I think you're dangerous" (to Mary Mayforth), "I'm going to call the police there (Maryland) to call and check on Gordon because I don't think he's even alive", "I think you're a maniac" (to Mary Mayforth). Calls left on Gordon Potts, Jr's answering machine immediately after the death of his father were "Dwight did not tell me anything" referring to hearsay from Dwight Nelson used in her Complaint); "now, you aren't going to

get SHIT!" (referring to any inheritance) "Y'all have taken my husband away from me", and "YOU KILLED YOUR DADDY." (Exhibit G- tape submitted as exhibit to this RESPONSE).

Pleadings-

AMENDED MOTION FOR SANCTIONS AND MOTION FOR SUMMARY JUDGEMENT IN FAVOR OF DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR. , October 30, 2000, Page 2-3, Item No 3, "Defendants are in the process of obtaining new representation against Connecticut General for Fraud and Deceit, and that a Summary Judgment for the Plaintiff would deny Defendants due process in this matter. Defendants assert that they intend to oppose any withdrawal of Connecticut General Life Insurance due to gross incompetence and deceit on the part of Connecticut General."; item No. 4, "Defendants maintain that the allegations made by the Plaintiff in her original complaint regarding "signatures" on the decedents transactions are fabrications not based in fact and that the Plaintiff in making these allegations lied with the intent of diverting funds that are the lawful property of the Defendants, Mary Potts Mayforth and Gordon R. Potts, Jr"

DEFENDANTS RESPONSE TO MOTION FOR PROTECTIVE ORDER, November 17, 2000, P. 2: "In response to Plaintiff's Paragraph 6, the Defendants, Mary Mayforth and Gordon Potts, Jr. have the right of Discovery from the Plaintiff; and that Ms. Mayforth merely asked Ms. Dugger when she might expect their return.... Ms. Dugger's claim of having concern or acting in consideration of the Defendants not having counsel is counteracted by her behavior, since she dramatically increased the

amount of her prosecution, and the pace of her prosecution against the Defendants immediately after forcing the withdrawal of their attorney by threat of seeking sanctions for "conflict of interest" against them."

DEFENDANT'S RESPONSE TO MOTION FOR CONTEMPT FILED SEPTEMBER 20, 2000 Page 1, item. 3

"Plaintiff asserts that by Order of the Court on August 18, 2000, Defendant was ordered by the Court to "provide proof of when he made a request to his bank for bank statements either by letter or telephone call." Defendant has provided written proof of request made to his bank for one such inquiry in documents hand delivered to the Plaintiff's attorney before hearing on October 9, 2000. (continued on page 2) Plaintiff had obtained the statements in question from the bank via subpoena 10 days before filing this Motion for Contempt and has no need of further documentation."

Page 2, item 4:

"To the defendant's knowledge, all of the missing bank statements at issue were provided either by the Defendant or the defendant's bank before the 30 days expired, and Plaintiff's attorney has not attested, either in writing or in oral communication with the Defendant that there were any documents still lacking discovery after the 30 day compliance period expired."

2. Where Abuse of Process occurs:

Third party defendant, Alice E. Nelson was not added to the suit upon the Plaintiff's discovery that there were three beneficiaries. Appellants refer to **TCA 20-1-114**, which states that new defendants to the suit may be

added by the *plaintiff*. Alice E. Nelson was added to the suit in June, 2000 by the *defendant*, Connecticut General Life Insurance. Although Alice E. Nelson did not make an appearance in court, she was due to make an appearance at trial.

Intent: The Plaintiff's attorney intended to minimize the opposition to her suit by preventing Alice E. Nelson from being cross-examined by Defendants/Appellants at trial and by submitting Ms. Nelson's letter to the Court as factual proof that her interests in the insurance funds had been transferred to the Plaintiff. Defendants/Appellants note that this letter was not a sworn or witnessed statement and subject to cross-examination. Not only were the Defendants/Appellants rights to process circumvented by preventing cross-examination of witnesses and evidence, but Alice E. Nelson, deemed a beneficiary at the outset of the suit and added later to the suit, was never given a chance to testify as to her interest in both the insurance benefits and in the educational funds transferred to Gordon R. Potts, Jr. by her father.

How process was abused: Plaintiff's COMPLAINT filed on September 1, 1999 did not include Alice E. Nelson as a defendant because the Plaintiff used hearsay information gained from Ms. Nelson's husband, Dwight as part of the Complaint (COMPLAINT page 2, par 1 and page 3 sentence 1), and needed Ms. Nelson as a cooperative party. The abuse of process was that upon discovery that Ms. Nelson was a beneficiary (about a month after the suit was filed), attorney Dugger did not add Ms. Nelson to the Complaint (which was amended twice during this time period). At our request, Ms. Nelson was finally added to the suit by Connecticut General's attorney, Mr. Keaton. This did not occur

until June, 2000. Even though Ms. Nelson was a party to the suit, there are no references made about Ms. Nelson by the Plaintiff in any of her pleadings, specifically Plaintiff's MOTION FOR SUMMARY JUDGMENT, nor any hearings.
Defendants/Appellants would propose that this is abuse of process by exclusion from process.
Appellants also claim that Summary Judgment on November 27, 2000 by the Court was inappropriate, and that the Court abused its discretion by not including Alice E. Nelson (one-third beneficiary on the change of beneficiary form processed by Connecticut General), pursuant to **TCA 25-3-135** which states that such other persons be made liable with the person accused of being in default, as may be in existence at the time of the motion.

3. **How Defendants were prejudiced by this abuse:**
All three biological children of Gordon R. Potts, Sr. were prejudiced by this abuse by being deprived of property without due process in the entire suit and in the Judgments entered by the trial court judge on November 13 and November 27, 2000.
Defendants/Appellants Potts and Mayforth were prejudiced by deprivation of due process in not being allowed to cross-examine Ms. Nelson and other witnesses about the facts of the case.

IV. Justification for Relief:

1. Motion for Sanctions

Defendants/Appellants Potts and Mayforth filed a MOTION FOR SANCTIONS against the Plaintiff and the Plaintiff's attorney on October 9, 20000. The Trial Court Judge dismissed these Sanctions in the hearing on November 13, 2000. We ask that the

Appeals Court overturn this decision and grant the Sanctions against Appellees Kathryn Dugger and Pearl Lynell Potts for the following reasons: 1) Appellants claim that Plaintiff's attorney, Kathryn Dugger abused process in the filing of the original suit, the use of Interrogatories for purposes other than intended, the use of Motions for Sanctions and Summary Judgment to prevent the issues from going to jury trail, and in asking for protection from discovery. Plaintiff's Order for Protection from Discovery was not itemized as per TRCP Rule 26, which states that a party withholding otherwise discoverable items by claiming that it is subject to protection shall describe the nature of the documents or things not produced to enable the parties to assess the applicability of the privilege protection. 2) That the suit filed by the Plaintiff and her attorney, Ms. Dugger, is Malicious Prosecution and we feel that **TRCP Rule 11** Sanctions are justified.

Defendants/Appellants filed a Motion for Sanctions pursuant to **TRCP 11.02**. The Plaintiff/Appellees claims were not withdrawn or corrected within 21 days.

TRCP 11:

(a) By Motion. A motion for sanctions under this rule **shall be made separately** from other motions or requests and shall describe the specific conduct alleged to violate subdivision 11.02. It shall be served as provided in Rule 5, **but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe)** (emphasis added), the challenged paper, claim, defense, contention, allegation, or denial **is not withdrawn or appropriately corrected**.

(b) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision 11.02 and directing an attorney, law firm, or party to show cause why it has not violated subdivision 11.02 with respect thereto.

Three elements of abuse of process:

Three elements are required to establish a claim for malicious prosecution: (1) a prior suit or judicial proceeding was brought without probable cause, (2) such prior action was brought with malice, and (3) the prior action was terminated in the plaintiff's favor. citing Roberts v. Federal Express Corporation, 842 S.W.2d 246-249 (Tenn. 1992).

1. **Sanctionable offenses brought before judge:**

AMENDED MOTION FOR SANCTIONS AND MOTION FOR SUMMARY JUDGEMENT IN FAVOR OF DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR., October 30, 2000, Page 3, Item No 4:

Defendants maintain that the allegations made by the Plaintiff in her original complaint regarding "signatures" on the decedents transactions are fabrications not based in fact and that the Plaintiff in making these allegations lied with the intent of diverting funds that are the lawful property of the Defendants, Mary Potts Mayforth and Gordon R. Potts, Jr.

Page 3, Item No. 3:

Defendants state that there is evidence attached herein that shows the Plaintiff lied in her original Complaint. Defendants ask that the Plaintiff be sanctioned for this.

DEFENDANT'S RESPONSE TO MOTION FOR CONTEMPT FILED SEPTEMBER 20, 2000, Page 4- Recites **TRCP Rule 11** requirements, and,
NOTICE OF INTENT TO SEEK SANCTIONS (Exhibit C), filed November 13, 2000, Page 1 item 1:

1. Kathryn Dugger did not make a reasonable pre-filing investigation of the facts prior to filing a complaint for Plaintiff Pearl Lynell Potts, and this is evidenced in the complaint drafted by Ms. Dugger and filed Sept 1, 1999in which she states that "beneficiary was changed to Mary Potts Mayforth" and that "Defendants by fraud, duress, or undue influence caused the deceased sign a paper writing for the purpose of changing the beneficiary on his life insurance policy" and that the actual form is unsigned.
2. That Kathryn Dugger did not demonstrate, as the basis of pre-filing investigation and research, that there is a REASONABLE BASIS to name each defendant named, and **to support each claim asserted.**
3. And that Ms. Dugger filed a "shotgun complaint" in the hope that discovery would produce the justification for it, and that this is improper. Ms. Dugger clearly did not investigate the legitimacy of her client's claims, and relied on Discovery to produce the "signatures" she says were coerced, as well as proof of the remainder of the Plaintiff's claims.
4. That Kathryn Dugger, acting on behalf of the Plaintiff did harass, by frivolous and frequent legal actions, the Defendants, thereby causing Defendants to miss work time and incur significant legal expenditures on the basis of these unfounded claims, and that Mary Potts Mayforth and Gordon R. Potts, Jr. are entitled to just compensation for

legal expenditures, loss of work, travel expenses and emotional distress caused by the actions of Ms. Dugger.

5. After discovery of the facts of the case contradicting Ms. Dugger's client's claims, Ms. Dugger made no attempt to withdraw as counsel or amend for these errors.

2. Law References:

The Tennessee Supreme Court has explained the requirements of Tenn. R. App. P. 11 as follows:

1. An attorney must READ every paper before signing it.

2. He [or she] must make a reasonable pre-filing investigation of the FACTS.

3. He [or she] must research the LAW, unless he [or she] is certain he [or she] knows it.

4. The law as applied to the facts must REASONABLY WARRANT the legal positions and steps he [or she] takes. If existing law does not warrant these positions, a plausible argument for the extension of the law to the facts of the case is required.

5. It must be demonstrated, as the basis of pre-filing investigation and research, that there is a REASONABLE BASIS to name each defendant named, and to support each claim asserted. **The shotgun complaint or answer, filed in the hope that discovery will produce the justification for it, is improper.**

Cases:

Alside vs Smith Heritage... C/A NO. 03A01-9702-CH-00069,1997 Tennessee Court of Appeals, Knoxville District , and Fenn vs Highland Credit

Bureau, 01-A-01-9503-CV-00100 Tennessee Court of Appeals, Nashville, 1995:

Rule 11 sanctions are reviewed by examining whether the Trial Court abused its discretion. *Krug v. Krug*, 838 S.W.2d 197 (Tenn.App. 1992), *citing Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 400, 110 S.Ct. 2447, 2458, 110 L.Ed.2d 359 (1990). An abuse of discretion occurs if the trial court's ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *Cooter* at 405.

We note preliminarily that federal authority may be used for guidance in interpreting Rule 11. *Andrews v. Bible*, 812 S.W.2d 284 (Tenn. 1991).

Rule 11 states in part that:

Representations to Court.- By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation . . . (3) the allegations and other factual contentions have evidentiary support after a reasonable opportunity for further investigation or discovery . . .

Tenn.R.Civ.Pro.11.02 (emphasis added).

Rule 11 sanctions against anyone who "advocates" a pleading, including the non-signing client. *Al-Haddad v. Ritter*, 1997 WL 44389 (Tenn.App. 1997)

3. Declaratory Judgment

Defendants/Appellants filed a MOTION TO AMEND WITH CROSS-CLAIM... on April 11, 2000 that was not adjudicated in this suit. In our proposed Amendment attached as Exhibit A of the April 11 pleading, we ask for Declaratory Judgment pursuant to **TCA 29-14-101** against Connecticut General Life Insurance Company. We ask that the Appeals Court issue this Declaratory Judgment because: 1) Abuse of process by Connecticut General's attorney, Reggie Keaton; 2) Fraud upon the Court by Reggie Keaton; 3) Negligence, fraud and deceit by Connecticut General caused Defendants/Appellants to suffer financial and emotional damages.

Where the Abuse of process, fraud and deceit occured:

In order to claim abuse of process and fraud, there has to be an intent and a motive for Connecticut General Life Insurance to deceive. We believe that the motive was simply money, and that the intent was to cover up the facts that the employees of Connecticut General Life Insurance had processed an unsigned beneficiary form. The delay of our discovery of the form being unsigned was tantamount to the Insurance company escaping without double liability. The Insurance Company's initial response to the suit was to have it removed to Federal Court on the basis of ERISA being federal jurisdiction. On December 2, 1999, shortly after this removal, we find the Insurance Company attorney, Reggie Keaton, signing an agreed order in *state court* to deposit the funds and withdraw. We feel that this complete turnaround indicates an ulterior motive. The deposition of the Connecticut General employee Lisa Weaver (Exhibit H) states

that she was not aware of the form being unsigned until April, 2000; yet Ms. Dugger and Tim McConnell noticed it right away when this document was produced in March, 2000. We assume that Mr. Keaton was equally as keen as the other attorneys and noticed that the form was unsigned when it was presented to him by Connecticut General. The abuse of process lies in the signing of an agreed Order in an attempt to deprive one or more of the other parties from seeking damages against Connecticut General, and in signing that Order with Defendants/Appellants Potts and Mayforth with the understanding that Potts and Mayforth had been told in writing by Connecticut General that they were beneficiaries of this policy, it was in bad faith to pursue ratifying a no longer "agreed" Order any further. This is deceit, plain and simple. Process was further abused by Connecticut General delaying the production of their discovery records until March 14, 2000. While the Defendants/Appellants had changed attorneys and needed additional time for discovery, we see no reason why Mr. Keaton could not have produced most of these documents earlier, at least this critical piece, and why he felt no obligation to advise the "beneficiaries" that there was a problem with the form. Further abuse of process and fraud-upon the court occurred when Mr. Keaton drafted the Order from the Federal Court. The Federal Order of Dec. 2, 1999 that Mr. Keaton drafted and repeatedly represents to the court as genuine does not reflect the intent of the Court, as Judge Hull states in his Order of October 20, 2000 (Exhibit D). Moreover, Mr. Keaton and the Plaintiff's attorney, Ms. Dugger both present this Order to the Court as a "Settlement

Agreement", which is a fraudulent representation of the facts. The records indicate that while the Defendants/Appellants Potts and Mayforth did not object to the money being deposited to the Court, that we did object to the withdrawal of Connecticut General. Notes from the Defendants/Appellants' attorney, Tim McConnell indicate that in telephone conversations with Kathryn Dugger, that she also was not ready to let Connecticut General out of the suit as late as June, 2000. So, while there was no dispute as to the deposit of funds, the Plaintiff and Defendants Potts and Mayforth were not in agreement with Connecticut General to withdraw. We claim that the use of this Order issued on December 2, 1999 in subsequent pleadings to the Court and representations of it being genuine is Fraud upon the Court by both Ms. Dugger and Mr. Keaton and the use of this fraudulent document in pleadings, (MOTION OF CONNECTICUT GENERAL LIFE INSURANCE FOR AN ORDER ENFORCING SETTLEMENT AGREEMENT... Nov. 3, 2000, and PLAINTIFF'S MOTION FOR CONNECTICUT GENERAL TO DEPOSIT FUNDS, October 31, 2000 is abuse of process. Both these Motions were made after the Federal Judge clarified his Order. There was no "Settlement Agreement" as represented to the court in MOTION OF CONNECTICUT GENERAL LIFE INSURANCE FOR AN ORDER ENFORCING SETTLEMENT AGREEMENT... Nov. 3, 2000, as this was not the Federal Court's intent or true Order, and as a deposit of funds to the court alone does not constitute a settlement agreement- it only guarantees the victor access to the funds. We ask for relief appropriate to Sanctions for Fraud upon the court and abuse of process, and that the

Declaratory Judgment asked for by Defendants/Appellants Potts and Mayforth now be granted to them. We also ask that Summary Judgment and Default Judgment be reversed in favor of Defendants/Appellants. Additionally, we ask the Court to find appropriate professional Sanctions against attorneys Dugger and Keaton.

Where it was called to the court's attention:

Pleadings- Defendants Potts and Mayforth's RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER SETTING A HEARING DATE.., November 20, 2000. A copy of the Federal Order that was misrepresented to the Court by Ms. Dugger and Mr. Keaton is attached to this pleading.

DEFENDANTS RESPONSE TO MOTION OF CONNECTICUT GENERAL LIFE FOR ORDER ENFORCING SETTLEMENT AGREEMENT*, November 20, 2000,

*Exhibits to this response included letters from Connecticut General telling Defendants Potts and Mayforth that they were beneficiaries.

Page 2, item 3:

"There is, and was no *Settlement Agreement* to which Connecticut General can appeal. There was an order issued December 2,1999, which was subsequently appealed to the Carter County Chancery Court containing documents in which..."continued on page 3: "Judge Hull of the U.S. District Court in Greenville specifically noted that his opinion (Exhibit B) in no way allowed the insurance company's withdrawal, and that his decision was only that the matter be re-filed in State Court."

Page 3 item 4

"That the Defendants has been notified that they were beneficiaries of the insurance policy , the

holder of the policy had been notified that the change had been processed (Exhibit C-1), and that Connecticut General did not provide Discovery of the Change of Beneficiary form until March, 2000, and deliberately withheld this information in an attempt to seek immunity from liability by entering into the Order made on December 2, 1999. Upon Discovery of this Change of Beneficiary form (Exhibit D), it was evident that the form was never signed and that Connecticut General Life Insurance had been negligent in processing the form (Summary of Connecticut General's employee, Lisa Weaver deposition Exhibit D-1). This put three Defendants in a position to be sued and prejudiced the case against the Defendants and places them in Double Jeopardy.

DEFENDANTS RESPONSE TO MOTION OF CONNECTICUT GENERAL LIFE FOR ORDER ENFORCING SETTLEMENT AGREEMENT, November 20, 2000, item No.8: "Defendants Mary Potts Mayforth and Gordon R. Potts, Jr. ask that other appropriate relief be granted as is deemed suitable by the Court. "

DEFENDANTS RESPONSE TO ORDER OF DISMISSAL WITHOUT PREJUDICE AS TO PART OF PLAINTIFF'S CLAIM FOR RELIEF AS TO DEFENDANTS MARY POTTS MAYFORTH AND GORDON R. POTTS, JR. (being filed in lieu of a Response, as the Plaintiff issued no originating Motion), November 22, 2000, Page 3, closing paragraph: "Defendants, Mary Potts Mayforth and Gordon R. Potts, Jr. seek Sanctions from the Plaintiff in the amount of sum total of the value of the items that Plaintiff accuses Defendants of stealing- $ 104,000.00 in death benefits; $39,225.47 in checks cashed by their father; an additional $25,000.00 for miscellaneous items; plus court costs and attorney's fees. Defendants reserve the right to separately address the amount of compensation ask for as relief from

Ms. Dugger and her Firm, Dugger & Cole for any malicious, unlawful, or unprofessional transgressions she has perpetrated upon the Defendants in this suit. We have yet to determine the final toll of emotional distress caused us, as these malicious attacks are still ongoing."

RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER SETTING A HEARING DATE FOR MOTION OF SUMMARY JUDGMENT, NOVEMBER 20, 2000, Page 6, item 13:

13. Defendants assert that the only fair solutions to the current dilemma are that:
    a. Motion for Summary Judgment and all Judgments issued on November 13, 2000, be reversed in favor of the Defendants, Mary Potts Mayforth and Gordon R. Potts, Jr., with allowances made for the 1/3 interest in the Insurance benefits and educational funds belonging to 3rd party defendant, Alice E. Nelson; and,
    b. That Defendants Mary Potts Mayforth and Gordon R. Potts, Jr. be awarded the amounts noted in the Plaintiff's complaint to be paid to them in compensation for the Malicious Prosecution and attempts to conceal evidence by the Plaintiff and Connecticut General Life Insurance. The total amounts are: 1) 1/3 EACH of the Insurance benefits($104,000.00 split between the three biological children of the deceased); 2) $35,927.88 + legal expenses judged against Gordon R. Potts, Jr. on November 13, 2000; 3) Legal fees incurred by the Defendants to defend this unwarranted lawsuit in the amount of the full amount paid to date for their defense (in excess of $22,000.00), and 4) $25,000.00 each to Mary Potts Mayforth

and Gordon R. Potts, Jr. for emotional distress caused by the Plaintiff.

4. **We ask the Court to Grant Relief:**

That the court erred by not including papers filed in federal Court, pursuant to **TCA 16-1-111**, which says that all cases removed from State to Federal Court, and which have been afterward remanded to the state courts, the pleadings, depositions, and proofs which have been filed in the federal court during its pendency there shall be used as if the same had been originally filed in the state court. Appellants refer to TCA 28-1-114, which states that if a nonsuit is taken as to the original civil action, any counterclaim or cross-claim arising from such action shall not be terminated but may proceed as an original civil action and ask that the Court grant Appellants cross-claim for Declaratory Judgment against Connecticut General Life Insurance and award the full amount of the Beneficiary proceeds, plus 10% interest to the Appellants on the basis of Fraud and Negligence in processing the claim by Connecticut General Life Insurance Company employees.

4. **Law References**:

If, after notice and a reasonable opportunity to respond, the court determines that subdivision 11.02 has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision 11.02 or are responsible for the violation of **Tennessee Rules of Civil Procedure, 11.03.** (Emphasis added).

From *Vekris v. Peoples Express Airline*, 707 F.Supp. 679, 682 (S.D.N.Y. 1988):

"sanctions are appropriate when an attorney submits a pleading, motion, or other paper on grounds which he knew or should have known were meritless."

TCA 20-6-402. Costs on equal demands.

On a plea of setoff or recoupment, if the demand of defendant equals the demand of the plaintiff, judgment for all costs is to be rendered for defendant.

[Code 1932, § 8771; T.C.A. (orig. ed.), § 20-1005.]

TCA 20-12-101. Recovery by successful party. (nonsuit)

The successful party in all civil actions is entitled to full costs, unless otherwise directed by law, or by a court of record, for which judgment shall be rendered.

[Code 1858, § 3197 (deriv. Acts 1794, ch. 1, § 74); Shan., § 4938; mod. Code 1932, § 9091; T.C.A. (orig. ed.), § 20-1601.]

20-12-110. Dismissal, abatement or discontinuance.

In cases of nonsuit, dismissal, abatement by death of plaintiff, or discontinuance, the defendant is the successful party, within the meaning of ...

[Code 1858, § 3201 (deriv. Acts 1794, ch. 1, § 74); Shan., § 4942; Code 1932, § 9095; T.C.A. (orig. ed.), § 20-1610.]

TCA 29-9-102. Scope of power:

The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any

except the following cases:
(4) Abuse of, or unlawful interference with, the process or proceedings of the court.

TCA 1-3-105. Definition of terms used in code.

(27) "Signature" or "signed" includes a mark, the name being written near the mark and witnessed, or any other symbol or methodology executed or adopted by a party with intention to authenticate a writing or record, regardless of being witnessed;

5. **Liability of the Plaintiff:**
We ask that the Plaintiff be held liable for Sanctions for two reasons: 1) That the suit filed was malicious, and 2) That the monies the Plaintiff accused the Defendants/Appellants of stealing was not Estate Property. This money was legally transferred to the Defendants/Appellants while the legal owner of these funds was alive. The Plaintiff has not supported her claim that the benefactor was incompetent to make this transfer, by evidence subject to due process or by any judgment handed down as to the competence of the benefactor, therefore, the Plaintiff should be held liable for damages to the Defendants/Appellants.

20-12-130. Personal representative's oath - Protection from liability.

(a) Any personal representative of the estate of any deceased person in this state may commence and prosecute any action or suit, or appeal, in favor of the estate represented by the personal representative, in any court without giving bond and security for costs, by taking and subscribing an oath that the personal representative, as such personal representative, has no property, belonging to the estate of the deceased, out of which to bear the expenses of the action or suit by

filing of an accompanying affidavit of indigency as prescribed by court rule, and that the personal representative verily believes that the estate, for the benefit of which the same is brought, is justly entitled to the redress sought. The filing of such a civil action without paying the costs or taxes or giving security for the costs or taxes does not relieve the responsibility for the costs or taxes, but merely suspends their collection until taxed by the court.

(b) In such case the personal representative shall not incur any personal liability, **unless the court trying the case should be of opinion and adjudge that the action was frivolous or malicious.**

Acts 1897, ch. 133; Shan., § 4930a2; mod. Code 1932, § 9083; T.C.A. (orig. ed.), § 20-1632; Acts 1995, ch. 242, § 4.]

6. Liability of the attorneys:

23-3-201. Grounds for disbarment or discipline.

Any attorney, solicitor or counselor at law admitted to practice in the courts of the state may be disbarred or suspended from the practice of law who:

(1) Commits, or may have committed, any infamous crime or misdemeanor involving moral turpitude;

(2) Seeks out any person having a claim for personal injury, or having any other ground of action, in order to obtain employment by such claimant or shall employ agents or runners for like purposes, or pay or reward, directly or indirectly, those who bring, or influence the bringing, of such cases to the attorney or the attorney's office;

(3) Wrongfully retains money or property of a client for an unreasonable time after demand made;

(4) Is guilty of any fraudulent act or

misrepresentation in proceedings to obtain admittance to the bar; or
(5) Is guilty of any unprofessional conduct, dishonesty, malpractice, or any conduct which renders such person unfit to be a member of the bar.

CERTIFICATION

We, the Appellants Certify that the foregoing 54 page Brief contains our true and righteous Appeal and that the attached Transcripts, Exhibits and Pleadings are true copies of the originals. We have studied the law and have prepared this appeal with due diligence. A copy has been forwarded by U.S. Mail on January____, 2001 to the Appellees, and one to the Clerk of the Appeals Court along with four copies.

"s/Gordon R. Potts, Jr." 1-10-01
Gordon R. Potts, Jr., Appellant Date

"s/Mary Potts Mayforth Jan 12, 2001
Mary Potts Mayforth, Appellant Date

APPENDIX K-1

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS	)
Individually and Executor of the	)
Estate of Gordon Ray Potts, Sr.,	)
Deceased,	)
	)
Plaintiff,	)
Civil Action No. 24432	
v.	)
	)
MARY POTTS MAYFORTH and	)
GORDON RAY POTTS, JR. and	)
CONNECTICUT GENERAL LIFE	)
INSURANCE COMPANY,	)
	)
Defendants.	)

REQUEST FOR JURY TRIAL

Comes now, Defendant Gordon R. Potts, Jr., in proper person, to request a jury trial in accordance with the following statute:

21-1-103. Right to trial by jury.

Either party to a suit in chancery is entitled, upon application, to a jury to try and determine any material fact in dispute, save in cases involving complicated accounting, as to such accounting, and those elsewhere excepted by law or by

provisions of this Code, and all the issues of fact in any proper cases shall be submitted to one (1) jury.

[Acts 1976, ch. 436, § 1; T.C.A., § 21-1011.]

The material facts in dispute are the allegations contained in the Motion for Sanctions filed by the Plaintiff's Attorney, Kathryn Dugger, on September 27, 2000 in this court. The allegations made in this document are that the Defendant, Gordon R. Potts, Jr. lied in a sworn statement. Defendant denies that this is the case and requests that a jury trial be scheduled and that no summary judgments be issued for the Plaintiff in the interim so that the defendant has opportunity for discovery, at trial, of the witnesses and evidence presented against him.

CERTIFICATE OF SERVICE

I, Gordon R. Potts, Jr., Defendant per se, hereby certify that I have mailed a true and exact copy of the foregoing Request for Jury Trial to the attorney for the Plaintiff, Kathryn J. Dugger, Dugger & Cole, 615 Elk Avenue, Elizabethton, 37643.

This __10th_ day of ___Oct__, 2000

"s/Gordon R. Potts, Jr. "
Gordon R. Potts, Jr.

APPENDIX K-2

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE

PEARL LYNELL POTTS,
Individually and Executor of the
Estate of Gordon Ray Potts, Sr.,
Deceased,
Plaintiff,
v. Civil Action No. 24432

MARY POTTS MAYFORTH,
GORDON RAY POTTS, JR.,
Defendants/Cross Defendants,
And

CONNECTICUT GENERAL LIFE
INSURANCE COMPANY,
Defendant/Counter—Claimant and Cross-Claimant
and Third—Party Plaintiff,
v.

ALICE ELIZABETH NELSON,
Third-Party Defendant.

MOTION FOR SANCTIONS AGAINST PEARL LYNELL POTTS, KATHRYN DUGGER, AND TIMOTHY McCONNELL

Comes now the Defendants, Mary Potts Mayforth and Gordon R. Potts, Jr., this 9th day of October, 2000 to request sanctions and appropriate relief as set forth herein:

MOTION FOR SANCTIONS AGAINST:
Pearl Lynell Potts, Plaintiff, Kathryn Dugger, Plaintiff's

Attorney,
Timothy McConnell, Acting for the Firm of Wilson, Worley & Gamble

Mary Potts Mayforth and Gordon R. Potts, Jr. are representing the interests and legal rights of their father, Gordon R. Potts, Sr., deceased, in regards to his right to do at his discretion, what he wished with his assets, debts and legacies. Both children are obligated to carry through these proceedings via promises made to their father before he died, promises made as last requests.

1. Plaintiff, Pearl Lynell Potts, has repeatedly undermined the final wishes of the deceased by 1) Issuing change of address orders for Mr. Potts, Sr. while he was still alive to steal his mail; 2) Telephone harassment on numerous occasions to Mr. Potts, Sr. before his death and to both Defendants before and after Mr. Potts, Sr. died; 3) Refusing to allow Defendants access to the remains of their father for the purpose of performing the ceremony as requested by Mr. Potts, Sr. for the past thirty—five years and known to all family members, including the Plaintiff. Because the Plaintiff refused to pay for the cremation of Mr. Potts, Sr., Defendants paid for this service and then were told by the funeral director that Lynell Potts said they could not take the ashes and that she was having the ashes sent by U.S. Postal Service to her sister in Fort Worth, Texas. 4) That the Plaintiff has proceeded with malice to attack the Defendants, both emotionally and financially, above and beyond any reasonable and customary means and that the motivation is purely based on greed and revenge against her husband (and anyone who assisted her husband) for leaving her. Plaintiff alleges that Mr. Potts, Sr. was not of sound mind and was coerced by the Defendants on several occasions (conspiring from two different states) to transfer money outside the free will of Mr. Potts, Sr. Defendants assert that Plaintiff has insufficient grounds on

which to base such an allegation, and Defendants can produce witnesses, both today and at the jury trial (that the Plaintiff requested in her original Complaint) to prove that Mr. Potts, Sr. was neither demented or coerced.

There has been no determination by any lawful procedure as to the state of mind of Mr. Potts, Sr. being anything but sound and rational when he changed his beneficiaries and sent money to his children to replace their educational funds; therefore, the Court must assume that these transactions were legal and that there was no theft or coercion by the Defendants.

2. That the intent of the Plaintiff's legal pursuance of the Defendants is to undermine a Motion for Appeal currently pending in Federal Court relating to the bifurcation of the case. This is due to the fact that the insurance company involved in this case willfully deceived the Defendants regarding the lack of signature on the change of beneficiary request. Because the bifurcation was granted without the Court's knowledge, Defendants' knowledge, and Plaintiff's knowledge of the insurance company's omissions and deceit, we were obligated to place an appeal of this decision in Federal Court so that the insurance company be held responsible for any misconduct or wrongdoing.

Any matters regarding the truthfulness of either the Plaintiffs or the Defendants' Answers to Interrogatories should not be addressed until 1) the Defendants have been given a chance to request production of documents from Plaintiff; 2) the Defendants have been given a chance to draft Interrogatories; 3) both parties have had opportunity to question witnesses regarding these matters either by deposition or by jury trial and 4) the Federal Court has been given the opportunity to made a decision regarding the venue in which this case is to be heard.

The Defendants assert that they have not been given

access to the complete set of documents in this case and that the Plaintiff's Motion for Sanctions and Motions for Contempt are based on documents that neither of the Defendants have seen or have access to. Examples of such documents include illegible copies, missing copies, copies of agreements between Stanley Givens, the Defendants' first attorney and Kathryn Dugger made in October, November, and December, 1999 without the Defendants' knowledge (have letters to Givens asking why he did not return any of my calls or contact me in any way from the last week of October forward).

Furthermore, the documents requested by the Plaintiff were ponderous and difficult to obtain as Defendant Gordon R. Potts, Jr.'s Answers to Interrogatories state. Defendant Gordon R. Potts, Jr. states that these records are difficult to obtain and that they would be sent as soon as they were located. Since we were not approaching a final jury trial date due to the Federal Court action, the Plaintiff is obligated to allow the Defendant more time to locate missing documents and that the Plaintiff's attorney, Ms. Dugger, already possesses copies of the checks regarding the funds in the bank statements and that her pursuance of Gordon R. Potts, Jr. to produce the bank statements is solely for the purpose of attempting to discredit the Defendant and not for the purpose of obtaining documents.

The Defendants, Mary Potts Mayforth and Gordon R. Potts, Jr., assert that they have been victims of gross misconduct by both Ms. Dugger and the two attorneys hired by the Defendants and that the Court issue sanctions against these attorneys and that the Court award compensation to Mary Potts Mayforth and Gordon R. Potts, Jr. in an amount not less than the attorney's fees paid and owed by the Defendants, and not more than the beneficiary amount of the life insurance policy value ($104,000.00) plus attorney's fees plus personal expenses.

3. Defendants assert that they have been completely truthful with both the Defendants' and Plaintiff's attorneys in revealing Answers to Interrogatories and the status of any funds, to the best of their recollection, being at issue with the Plaintiff. Defendants would like to note that the questions from the Plaintiff in the Interrogatories ask for information that was available only to the Plaintiff and the deceased. Defendants also note that the Plaintiff's attorney was made aware on a timely basis that due to Mr. Potts, Jr.'s interstate move that some documents were not available but would be produced as soon as they were located. In specific reference to the statements from South Padre Island Bank, the cover letter sent by South Padre Island Bank to Ms. Dugger with the bank statements attached states that the account was opened, closed and then re-opened. This in fact is not true. Defendant has proof that these were two separate accounts with two different account numbers. In his communications with Tim McConnell, Gordon T. Potts, Jr. referred to the opening of the second account in South Padre in November, which is true. The first account at South Padre Bank was opened in July of 1999 and closed in August of 1999 and the money was subsequently transferred to a safety deposit box due to a security risk imposed by Lynell Potts making claims and transacting business for Gordon R. Potts, Sr., and the confusion imposed by the fact that the Defendant bears the same name as his father. The Defendant Gordon R. Potts, Jr. advised Tim McConnell that there was at least twenty thousand dollars transferred to him by the deceased and Mr. McConnell transcribed 'twenty thousand dollars" on the Answers to Interrogatories. Mr. McConnell also transcribed the date of this transfer as being July 5, 1999, a date on which Gordon R. Potts, Sr. was still with his wife in Tennessee and was in possession of the aforementioned check, a fact well known to Tim McConnell and to the Plaintiff. Furthermore, the

proof copy of Gordon Potts, Jr.'s Answers to Interrogatories was mailed by Mr. McConnell to Defendant Potts on March 13, 2000 with a notation that they were due to be filed in Court on March 17, 2000. This did not even allow adequate time for mailing, much less inspection, and the Defendants should not be held liable for the mistakes made by their attorneys. There have been no attempts made to conceal monies by the Defendants, as the Answers to Interrogatories admitted possession of some amount of these monies, whereas if deception were the intent, the Defendants would have denied possession of any of these monies. Defendants maintain that they have been truthful throughout.

4. With regard to the Motion to Withdraw by Tim McConnell / Wilson, Worley & Gamble, the Defendants assert that the Motion filed is detrimental to the Defendants' interests in this case in that it infers that their client (Gordon R. Potts, Jr.) has intentionally deceived the attorneys and supports indirectly the Plaintiff's claim that monies were stolen from the deceased, the same monies that Mr. McConnell has been aware were in the defendant's possession since March, 1999, and that Gordon R. Potts, Jr. and Mary Potts Mayforth coerced, lied and deceived both Gordon R. Potts, Sr. and the Court. The Defendants maintain that this is in violation of their rights as clients and undermines the civil process and that none of these allegations or inferences are true nor that either attorney has obtained any evidence to prove that the Defendants have been untruthful or that they have just cause to file this Motion for Contempt, this Motion for Sanctions or this Motion to Withdraw. Due to the fact that the Motion to Withdraw set forth by Tim McConnell has damaged the Defendants' case and irreparably damaged the opportunity for the Defendants to proceed any further with Wilson, Worley & Gamble, the Defendants are forced to request

sanctions by this Court in the amount of the sum of the legal fees billed by Wilson, Worley & Gamble since the preparation of the Answers to Interrogatories forward, and additionally award the Defendants punitive damages not to exceed the amount of the insurance benefit for Gordon R. Potts, Sr. We also ask that the Court order Tim McConnell to allow inspection of our file and copy services at no charge to the Defendants this afternoon and that the files inspected by 100% complete, including all communications, notes, evidence, pleadings, actions, etc.

5. Defendants assert that there is no conflict of interest between Mary Potts Mayforth and Gordon R. Potts, Jr. as alleged in paragraph three of the Motion to Withdraw by Tim McConnell: "until now, the interests of Defendant Mary Potts Mayforth and Defendant Gordon Ray Potts, Jr. were alike as both denied the Plaintiff's allegations that they stole money from Gordon Potts, Sr. and both denied knowledge of what happened to each of the specific amount at issue; however, given the Plaintiff's most recent allegations and the information set forth in the South Padre Bank statements of Defendant Gordon Ray Potts, Jr., it appears that the Defendants now have potentially differing, if not conflicting, interests...". Defendants once again assert that they did not steal money from Gordon Potts, Sr. and that they do not have complete knowledge of each of the specific amounts at issue due to the fact that the Plaintiff and the deceased alone have information pertaining to "what happened" to each amount. Since the Defendants maintain that they have participated in no foul play or deceit and there has not been proof otherwise, nor opportunity for the Defendants to present evidence contradicting the Plaintiff's allegations of theft and coercion, then there can be no grounds to infer a conflict of interest before such allegations can be refuted.

6. Defendants request that any further Motions by the Plaintiff be referred to the final jury trial for dispensation and Defendants request a postponement of the trial date requested by Ms. Dugger scheduled for the last week of November, 2000 on the basis of the consideration in Federal Court of the bifurcation and to allow the Defendants a minimum of sixty--days in which to prepare and secure responses to Interrogatories and production of documents from the Plaintiff.

7. The Defendants ask that the Court recognize that they are now representing themselves in this case due to the extreme financial duress caused by the Plaintiff and by the ineptitude of the attorneys.

8. Finally, the Defendants ask that the Court allow the Defendants a greater degree of judicial latitude in view of the differences of awareness of legal procedure between the attorneys and the Defendants.

Respectfully submitted,

10/8/00
Date

" s /Gordon R. Potts, Jr"
Gordon R. Potts, Jr.

10/8/00
Date

"s/Mary E. Potts Mayforth"
Mary E. Potts Mayforth

I HEREBY CERTIFY that on this 9th day of October, 2000, a copy of the foregoing Motion for Sanctions was hand delivered to Timothy McConnell and to Kathryn Dugger.

"s/Mary E. Potts Mayforth"
Mary E. Potts Mayforth

APPENDIX K-3

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE
PEARL LYNELL POTTS,
Individually and Executor of the
Estate of Gordon Ray Potts, Sr.,
Deceased,
Plaintiff,

V. Civil Action No. 24432

MARY POTTS MAYFORTH,
GORDON RAY POTTS, JR.
Defendants/Counter-Claimants,
and
CONNECTICUT GENERAL LIFE
INSURANCE COMPANY,
Defendant/Counter-Claimant and
Cross-Claimant

FILED THIS 11TH
DAY OF April 2000
at 10:45 O'CLOCK A.M.
CHARLOTTE MCKEEHAN
CLERK AND MASTER

MOTION TO AMEND ANSWER TO CROSS-CLAIM FOR INTERPLEADER

Comes now Defendants, Mary Potts Mayforth and Gordon Ray Potts, Jr., by counsel, pursuant to Tenn. R. Civ. P. 15, and move this Court to amend their Answer to the Cross-Claim for Interpleader filed against them by Connecticut General Life Insurance Company ("Connecticut General"). In support of this Motion, Defendants state as follows:

1. Connecticut General has filed a cross-claim for

interpleader against Defendants asserting that interpleader is appropriate in this case.

2. In their Answer to the Cross-Claim, Defendants admitted the interpleader was appropriate in this action.

3. Subsequent to the filing of their Answer to the Cross-Claim, during discovery in this matter, it was revealed that the request for change of beneficiary form designating Alice Elizabeth Nelson, Mary Ellen Mayforth, and Gordon Ray Potts, Jr. as the primary beneficiaries was not signed by Gordon Ray Potts, Sr., the owner of the life insurance policy.

4. During discovery in this matter, it was further revealed that although the life insurance policy required the signature of the owner to change the beneficiary, Connecticut General proceeded to process the request for change of beneficiary form without the signature of Gordon ray Potts, Sr.

5. Defendants seek to amend their Answer to the Cross-Claim filed by Connecticut General to assert that interpleader is not appropriate in this case. In addition, Defendants seek to assert a counter-claim against Connecticut General to establish the rights of the parties as to the request for change of beneficiary form and, in the alternative, if the change of beneficiary form id found to be invalid, to assert that Connecticut General negligently processed the form to the detriment of the defendants.

6. Defendants' proposed Amended Answer and Counter-Claim is attached hereto as Exhibit A.

Respectfully submitted,

WILSON, WORLEY AND GAMBLE, P.C.

By: __ "s/Joel A. Conkin" ____
JOEL A. CONKIN BPR#16637

By: __ "s/Timothy B. McConnell" __
TIMOTHY B. MCCONNELL
BPR#19136
Sullivan County Bank Building, 4th Floor
110 East Center Street
P.O. Box 1007
Kingsport, TN 37662-1007
(423) 246-8181

CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of the foregoing has been served upon the following, by U.S. Mail, postage prepaid, to the addresses as follows:

Kathryn J. Dugger
DUGGER & COLE
615 Elk Avenue
Elizabethton, TN 37643
Attorney for Plaintiff

Reggie E. Keaton
FRANTZ, McCONNELL & SEYMOUR, L.L.P.
P.0. Box 39
Knoxville, TN 37901
Attorney for Defendant Connecticut General Life Insurance Company
On this the 10th day of April, 2000

"s/Timothy B. McConnell"
Timothy B. McConnell

APPENDIX K-4

IN THE CHANCERY COURT FOR CARTER COUNTY
AT ELIZABETHTON, TENNESSEE
PEARL LYNELL POTTS,
Individually and Executor of the
Estate of Gordon Ray Potts, Sr.,
Deceased,
Plaintiff,

V. Civil Action No. 24432

MARY POTTS MAYFORTH,
GORDON RAY POTTS, JR.
Defendants/Counter-Claimants,
and

CONNECTICUT GENERAL LIFE
INSURANCE COMPANY,
Defendant/Counter-Claimant and
Cross-Claimant

FILED THIS 11TH DAY OF
April 2000 at 10:45 O'CLOCK A.M.
CHARLOTTE MCKEEHAN
CLERK AND MASTER

AMENDED ANSWER AND COUNTER-CLAIM

Comes now Defendants, Mary Potts Mayforth and Gordon ray Potts, Jr., by counsel, and for their Amended Answer to the Cross-Claim for Interpleader filed against them by Connecticut General Life Insurance Company ("Connecticut General"), states as follows:

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.

4. In response to the allegations contained within the first sentence of Paragraph 4, Defendants state that Alice Elizabeth Nelson should be made party to this action.
5. Defendants state that interpleader is inappropriate in this case.
6. With respect for the prayer for relief found at page 5 of the Counter-Claim and Cross-Claim for Interpleader, Defendants respond as follows:
In response to Paragraph 1, Defendants state that Alice Elizabeth Nelson should be made a party to this lawsuit. With respect to the remaining paragraphs in Connecticut General's prayer for relief, Defendants deny that Connecticut General is entitled to any of the relief requested under any theory, legal or equitable, whatsoever.
7. All allegations contained within Connecticut General's Cross-Claim for Interpleader not heretofore admitted or denied, are here and now denied if specifically set forth herein.

COUNTER-CLAIM

Defendants/Counter-Claimants, Mary Potts Mayforth and Gordon Ray Potts, Jr., by counsel, for cause of action asserted by way of Counter-Claim against Connecticut General Life Insurance Company and Pearl Lynell Potts, allege as follows:

1. Mary Potts Mayforth is a citizen and resident of the State of Maryland, residing at 4012 Spruell Drive, Kensington, MD *20895*. Defendant Gordon Ray Potts, Jr. is a citizen and resident of the State of Missouri, residing at 1260 Grady Road, Forsyth, MO *65653*.
2. Connecticut General Life Insurance Company ("Connecticut General") is a Connecticut corporation licensed to do business in Tennessee.
3. Pearl Lynell Potts is a resident of the City of

Elizabethton, Tennessee and the court appointed Executrix of the Estate of Gordon Ray Potts, Sr.

4. Connecticut General issued a life insurance policy which provided life insurance benefits to employees enrolled for coverage under an employee welfare benefit plan provided by Siemens Corporation. The deceased, Gordon Ray Potts, Sr., was enrolled for coverage in the employee welfare benefit plan.

5. A beneficiary designation form, dated October 9, 1995 and appearing to have the signature of Gordon Potts, designated Pearl Lynell Potts as the primary beneficiary. (A true copy of the beneficiary designation form is attached hereto as Exhibit 1).

6. Subsequently, on or about July 14, 1999, Connecticut General received a telephone call from Gordon Ray Potts, Sr., requesting a Request for Change of Beneficiary Form.

7. In response to the request by Gordon Ray Potts, Sr., Connecticut General mailed a Request for Change of Beneficiary Form to Gordon Ray Potts, Sr. at Route 2, Box 3097, Krum, Texas 76249.

8. Connecticut General subsequently received a Request for Change of Beneficiary Form designating Alice Elizabeth Nelson, Mary Ellen Mayforth, and Gordon Ray Potts, Jr. as the primary beneficiaries. (A true copy of the Request for Change of Beneficiary Form is attached hereto as Exhibit 2).

9. The Request for Change of Beneficiary Form was not signed by Gordon Ray Potts, Sr.

10. Pursuant to the terms of the life insurance policy, any change of beneficiary was required to be made on a form satisfactory to Connecticut General and signed by the owner of the policy.

11. Despite receiving an unsigned Request for Change of Beneficiary Form, Connecticut General did not attempt to notify Gordon Ray Potts, Sr. of the

necessity of his signature.

12. Moreover, Connecticut General did not require the signature of Gordon Ray Potts, Sr. to change the beneficiaries under the life insurance policy as, on or about July 23, 1999, Connecticut General processed the Request for Change of Beneficiary Form designating Alice Elizabeth Nelson, Mary Ellen Mayforth, and Gordon Ray Potts, Jr. as the primary beneficiaries.

COUNT I
(Declaratory Judgment)

13. Defendants repeat the allegations contained in paragraphs 1-12 of this CounterClaim.

14. The life insurance policy was a contract between Connecticut General and Gordon Ray Potts, Sr.

15. Although the policy required the signature of the owner/Gordon Ray Potts, Sr. to change the beneficiaries, Connecticut General waived this requirement by processing the Request for Change of Beneficiary Form.

16. Pursuant to Tenn. Code Ann. §§ 29-14-101, et. seq., this Court may enter Declaratory Judgment establishing the validity of the Request for Change of Beneficiary Form. Defendants are entitled to a declaration that the request for change of beneficiary form was valid and that Defendants are the primary beneficiaries under the life insurance policy of Gordon Ray Potts, Sr.

COUNT II (Negligence)

17. Defendants repeat the allegations contained in paragraphs 1-16 of this CounterClaim.

18. Alternatively, if this Court declares that the Request for Change of Beneficiary Form was not valid,

Defendants allege that the invalidity of the Request for Change of Beneficiary Form is the direct result of Connecticut General's negligence in accepting and processing the unsigned form.

19. Gordon Ray Potts, Sr. submitted a Request for Change of Beneficiary Form which was unsigned to Connecticut General setting forth his desire to designate Mary Potts Mayforth, Gordon R. Potts, Jr. and Alice Elizabeth Nelson as the primary beneficiaries of his life insurance policy.

20. At no time did Connecticut General return the unsigned form or otherwise notify Gordon Ray Potts, Sr. of the necessity of his signature. Rather, Connecticut General negligently proceeded to process the unsigned form, negligently leading Gordon Ray Potts, Sr. to believe he had made a valid beneficiary change.

21. As a direct result of Defendant's negligence in processing the unsigned form, Mary Potts Mayforth and Gordon Ray Potts, Jr., two of the primary beneficiaries as designated and intended by Gordon Ray Potts, Sr. in the change of beneficiary form, have suffered the loss of the insurance policy proceeds.

WHEREFORE, Defendants, Mary Potts Mayforth and Gordon Ray Potts, Jr., respectfully request the following relief:

1. That the Court enter a Declaratory Judgment as to the validity of the Request for Change of Beneficiary Form.

2. That judgment be entered for Defendants/Counter-Plaintiffs on their claim for negligence against Connecticut General in the amount of $104,000, together with pre-and postjudgment interest;

3. For such other and further relief as the Court deems proper.

Respectfully submitted,
WILSON, WORLEY AND GAMBLE, P.C.

By: __ "s/Joel A. Conkin"____
JOEL A. CONKIN
BPR#16637

By: __ "s/Timothy B. McConnell"__
TIMOTHY B. MCCONNELL
BPR#19136
Sullivan County bank Building, 4th Floor
110 East Center Street
P.O. Box 1007
Kingsport, TN 37662-1007
(423) 246-8181

CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of the foregoing has been served upon the following, by U.S. Mail, postage prepaid, to the addresses as follows:

Kathryn J. Dugger
DUGGER & COLE
615 Elk Avenue
Elizabethton, TN 37643
Attorney for Plaintiff

Reggie E. Keaton
FRANTZ, McCONNELL & SEYMOUR, L.L.P.
P.0. Box 39
Knoxville, TN 37901
Attorney for Defendant
Connecticut General Life Insurance Company

On this the 10th day of April, 2000

"sig/Timothy B. McConnell"
Timothy B. McConnell

I, Charlotte McKeehan, Clerk and Master Of the Chancery Court, Elizabethton, Tennessee, hereby certify that this is a True and perfect copy of the original Motion to Amend Answer

Filed in this cause. This Sept 7, 20 00

"s/Charlotte McKeehan"
Clerk and Master